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IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 BY
 DEPUTY CLERK

UNITED STATES OF AMERICA) Docket No. A 99-CR-274 SS
)
 v.) Austin, Texas
)
 GARY PAUL KARR) May 15, 2000

VOLUME 2 of 12
 TRIAL ON THE MERITS
 BEFORE THE HONORABLE SAM SPARKS

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
 produced by computer.

LILY I. REZNIK
 UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS (AUSTIN)

ORIGINAL

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1 THE CLERK: The Court calls case No. A 99-CR-274,
2 United States of America vs. Gary Paul Karr.

3 MR. CARRUTH: Gerald Carruth and Dan Mills for the
4 United States; we're ready.

5 THE COURT: Mr. Pitman.

6 MR. CARRUTH: I'm sorry. Mr. Pitman will be here
7 during the jury selection, your Honor. He won't be presenting
8 or crossing any witnesses.

9 MR. T. MILLS: For the defense, Tom Mills, Christi
10 Williams; we're ready.

11 THE COURT: I have several things that y'all have
12 filed over the weekend, first, a subpoena, to subpoena the
13 custodian records of the Warren Inn in San Antonio --

14 MR. T. MILLS: Yes, sir.

15 THE COURT: -- from August to December. And, Mr.
16 Mills, you have great faith that a small motel is going to
17 have a lot of records on the date of trial. I have no
18 objections to the subpoena, but you're going to get a subpoena
19 -- have you made rearrangements for any of these records?

20 MR. T. MILLS: They've refused to cooperate with us.
21 We've attempted to interview them on three occasions. I've
22 been down there once with Ms. Williams and our investigator on
23 two occasions. During the time that the -- we are continuing
24 to get new material as recently as yesterday from the
25 government. We're working as diligently as we can.

1 We recently learned that during the period of time
2 that the three people were allegedly being held captive, that
3 there was maintenance work done on the frame of the door, and
4 that the maintenance worker likely saw what was happening
5 inside, or at least had to have the door open to do the work.
6 And we're trying to track down that person's name as well as
7 any other maintenance work that may have been done during that
8 period of time, and I don't know if they have those records.

9 THE COURT: Well, isn't it a little broad in August 1
10 to December 31, every single person that's ever been under
11 Rule 11?

12 MR. T. MILLS: Well, we could narrow it down.

13 THE COURT: Well, I'm just asking as a practical
14 matter. First off, I don't have a Marshal that's going to
15 serve this. My Marshals are busy. I've got 4,000 people in
16 39 jails in the Western District, and I've had all of your
17 other subpoenas issued, but today, I don't have a Marshal. So
18 however you're going to serve it, that's your business.

19 But secondly, I got this I just call my lawyer and get
20 a motion to quash too broad. They're going to come in with a
21 motion to quash too broad, I'm going to grant it. It's too
22 broad. So it's an exercise of futility. If you want to get a
23 good description on a good subpoena, I'll consider it. But
24 I'm not going to consider that one. It's too broad. Six
25 months, all runners in a single room in a case where we've got

1 a lot of publicity involved. No telling who's been in that
2 room.

3 MR. T. MILLS: Just for the Court's understanding,
4 it's not a single room.

5 THE COURT: It says Room 11.

6 MR. T. MILLS: I know. It's called Room 11. You open
7 the door, it says Room 11, but it's a two-bedroom kitchen
8 living room, TV room, it's a suite.

9 THE COURT: Do you have any idea how many people
10 rented it from August to December?

11 MR. T. MILLS: No, sir, but it's typically rented by
12 the week. So it's not like a typical motel room that has a
13 new renter every day, but I will redraft it.

14 THE COURT: All right. Well, get it specific enough
15 to be returnable, and I will sign it. All right. Then, I've
16 got the voir dire question, whether or not any prospective
17 juror has any preconceived ideas on whether or not these three
18 alleged victims are either deceased or not deceased, and I
19 will cover that in my voir dire.

20 Then, I have the first in limine, list of objections.
21 The Clerk has just given me, I think, the statement that
22 you're referring to. Objecting to statement sentence 1, 2, 4,
23 7 and 8 on a, quote, voluntary statement of the defendant,
24 Karr, and I assume this is the statement. All right.

25 MR. T. MILLS: The defense doesn't object to the

1 prosecutor making the statement that Mr. Karr has been in
2 prison, but this statement and other testimony that goes
3 beyond that as far as details of convictions and lengths of
4 time we're objecting to.

5 THE COURT: Okay. So these five sentences in the
6 statement, do they all relate to specific convictions?

7 MR. T. MILLS: I believe they more relate to having
8 spent a long period of time incarcerated. They are pursuant
9 to one or two convictions that happened in the 1970s.

10 MR. CARRUTH: May I respond, your Honor?

11 THE COURT: Well, let me read the four sentences. You
12 object to the sentence, during the prior years I make David
13 Waters file in an honor dorm in prison?

14 MR. T. MILLS: Yes, sir.

15 THE COURT: Well, that objection's overruled.

16 MR. T. MILLS: We just don't think there was any part
17 of the conspiracy that was happening during that --

18 THE COURT: I don't have any idea one way or the
19 other. I haven't heard any evidence. I'm going to knock out
20 the sentence he kept to himself and I kept to myself and he
21 learned to trust me. Is that one of the objections?

22 MR. T. MILLS: It was not intended to be objected to.
23 If I had known that it was --

24 THE COURT: And I stayed in touch through phone calls,
25 postcards and letters. All right. Mr. Carruth.

1 MR. CARRUTH: Your Honor, the government is aware of
2 absolutely no legal authority to selectively delete portions
3 of the voluntary statement to which the defendant has not
4 sought to suppress this back to do so -- in fact, when the
5 pretrial detention hearing was held in this case before
6 Magistrate Judge Capelle, he, at his suggestion, states into
7 evidence and made it a part of the public record. It would be
8 misleading to the jury to delete certain parts of the
9 statement because it is Mr. Karr's voluntary statement. It
10 was found to be voluntary by the same United States District
11 Judge.

12 THE COURT: Voluntary statements can have inadmissible
13 evidence in it, and when it is tendered, a party can object to
14 it notwithstanding the past record.

15 MR. CARRUTH: Well, I'm urging to the Court that I'm
16 representing to the Court this will be one of the last pieces
17 of evidence offered by the government. So by the time the
18 statement is offered, this Court would have heard the evidence
19 in the case.

20 THE COURT: All right. Well, I'll carry this motion,
21 but in carrying it, I don't want you referring to it until
22 it's offered. Then, approach the bench.

23 MR. CARRUTH: Thank you, your Honor.

24 THE COURT: All right.

25 MR. CARRUTH: Any others or those to which he objects?

1 THE COURT: Well, I suspect the only thing that is to
2 those four sentences that he's objecting to. But I think it's
3 going to be covered in some of the other -- you've got a copy
4 of this, have you not?

5 MR. CARRUTH: I do, your Honor.

6 THE COURT: All right. The defendant objects to the
7 prosecutor eliciting testimony or stating that the defendant
8 was in prison for either kidnapping or robbery, if he was.
9 All right. I love lawyers that live in the imaginary world of
10 perfect. All right.

11 MR. CARRUTH: Rule 404B of the Federal Rules of
12 Evidence clearly provides for the admission of the testimony
13 because we are in the kidnapping and robbery case and the
14 conviction is timely, and so if it may become admissible for
15 that purpose, which we would certainly approach the bench for
16 our decision as to permissibility, we believe it may come into
17 evidence.

18 THE COURT: All right. Just approach the bench before
19 you get into it. Conversations -- telephone records or
20 testimony of telephone conversations between the Defendant
21 Karr and anyone else prior to Karr's release from jail in the
22 spring of '95 on an expectation of privacy. What are we
23 talking about?

24 MR. CARRUTH: Well, we're talking about several
25 collect calls Mr. Karr made to Mr. Waters' residence while he

1 was being incarcerated, and at that time, the evidence is
2 going to show that they were talking about this plan, this
3 scheme, this conspiracy on some of those conversations, Mr.
4 Karr's -- excuse me. Mr. Waters' then girlfriend talked to
5 Mr. Karr on the phone.

6 THE COURT: All right. There's no recording of it.

7 MR. CARRUTH: There's only one recording that we have
8 to offer, and that was made when he was incarcerated in
9 Detroit during the past year, not when he was incarcerated in
10 Illinois.

11 THE COURT: Mr. Mills, you're objecting to the fact
12 that there were conversations, the fact that there were
13 telephone conversations between the Defendant Karr and the
14 Waters number? Is that what you're objecting to?

15 MR. T. MILLS: Well, I'm specifically objecting to the
16 substance of the conversations if I worded it. That's how I
17 intended to be objecting.

18 THE COURT: Well, I don't know what the substance is,
19 so I will overrule the motion in limine. You may make your
20 objections at the time of the tender. Paragraph 4, evidence
21 of guns found in the apartment at the time of arrest March of
22 '99, on the grounds that has previously been suppressed by a
23 federal judge in Michigan. Very persuasive. What are we
24 talking about here?

25 MR. CARRUTH: We're talking about two loaded handguns,

1 a .22 caliber that was determined had been stolen during a
2 home invasion robbery in Indianapolis, Indiana in July of
3 1998.

4 THE COURT: What relevance?

5 MR. CARRUTH: I don't know that it has any relevance
6 to this case and we will not seek to offer it, your Honor, but
7 in Mr. Karr's statement and, I think, probably their defense
8 is going to be that he was afraid of Mr. Waters and that's why
9 he had these guns. And we believe the evidence is going to
10 show that during the course of their association, Mr. Waters
11 has provided Mr. Karr several firearms.

12 And, also, in a statement, he specifically mentions
13 I've got this gun because I was afraid of Mr. Waters. But we
14 will not seek to offer the firearms themselves, your Honor.

15 THE COURT: Well, he's more interested in evidence
16 that he had guns in March of '99 at the time of his arrest.
17 Other than his voluntary statement, approach the bench before
18 you attempt to get into it.

19 MR. CARRUTH: Yes, your Honor.

20 THE COURT: Extraneous offenses concerning conduct in
21 Indianapolis, Indiana and in California.

22 MR. T. MILLS: Pertaining to what Mr. Carruth has
23 mentioned, not formally charged, but he says that there's
24 evidence of robberies committed by -- either committed or
25 planned by Mr. Karr and Mr. Waters.

1 THE COURT: Well --

2 MR. CARRUTH: That's true. There is such evidence,
3 and should it become admissible, we would approach the bench
4 and seek its admission under 404B Rules of Evidence.

5 THE COURT: All right. Well, I'll grant the motion in
6 limine, and, counsel, approach before we get into conduct in
7 Indianapolis, Indiana and California relating to proposed
8 robberies. Jason Cross, inherently unreliable. I've sure
9 crossed a lot of people in my lifetime who were inherently
10 unreliable. It was sometimes the jury believed it and
11 sometimes they didn't. I don't know --

12 MR. T. MILLS: Your Honor, he's a prison inmate who
13 purports that Mr. Karr made incriminating statements to him.
14 The file that I've gotten from the public record in Michigan
15 so far indicates that he has his -- got his lawyer to submit
16 psychoneurological evidence of his behavior problems, and
17 additionally --

18 THE COURT: What does that mean? A lot of people in
19 prison have a little problem. I mean --

20 MR. T. MILLS: Well, severe problems, severe
21 neurological problems.

22 THE COURT: Are you taking the position he is not
23 competent as a witness?

24 MR. T. MILLS: I'm raising that as an issue, yes. I
25 believe that there was -- I believe, however, that his plea of

1 guilty was accepted, and a diminished capacity reduction in
2 points were made. So it may not be such that it goes to
3 competence.

4 THE COURT: So what do you want?

5 MR. T. MILLS: Well, I'd like to be able to -- if I
6 have -- if I can get additional evidence, I'd like to be able
7 to question prior to his testimony before the jury to see if I
8 do have evidence that approaches incompetence.

9 THE COURT: Well, you'll know what evidence you have
10 before you question him.

11 MR. T. MILLS: Yes, sir.

12 THE COURT: What you want is a deposition before he
13 testifies.

14 MR. T. MILLS: Not quite.

15 THE COURT: Well, it's what you want. Same thing with
16 Morris and Chase.

17 MR. T. MILLS: Additionally, on these three witnesses,
18 my law office has been contacted by a fourth prison inmate,
19 another prison inmate who says that Mr. Cross, through his
20 family, hired a private investigator to do research on the
21 missing O'Hair Murray family, got that research, gave it to
22 Mr. Cross, who then pretended to the FBI or IRS agent that he
23 had learned this information from Mr. Karr. That would, of
24 course, be fraud upon the government as well as the Court.

25 If we can continue -- we are on -- trying to develop

1 that evidence, and I will bring it to the attention of Mr.
2 Carruth if I do and make a motion to the Court if it is
3 appropriate.

4 THE COURT: All right. When are Cross, Morris and
5 Chase scheduled to --

6 MR. CARRUTH: They will also be toward the end of
7 trial, your Honor.

8 THE COURT: All right. Well, I'll carry those.

9 MR. CARRUTH: And might I respond briefly to some of
10 these allegations or --

11 THE COURT: Well, I've --

12 MR. CARRUTH: -- the Court's ruled, but I just want
13 the Court to know two things. I think that the evidence will
14 show Mr. Cross at some point in his life sustained a head
15 injury that required some type of -- you know, it was an
16 organic injury. And I found, also, that the evidence is going
17 to show that he began making very detailed, handwritten notes
18 which he provided to the investigators about his conversations
19 with Mr. Karr while incarcerated together, long before this
20 letter was retained from him, even before the search warrant
21 affidavit from the search of Mr. Waters' residence was
22 unsealed.

23 So counsel's story I'm hearing for the first time this
24 morning notwithstanding my request for specific discovery that
25 he's claiming this whole thing was concocted. I'm hearing it

1 for the first time with the Court, and I'm sure that's not
2 what the evidence is going to show.

3 THE COURT: All right. Anything else?

4 MR. T. MILLS: There is one other thing else, your
5 Honor. Yesterday, we were given a copy of some material from
6 the Austin Police Department file. The date in the very top
7 left-hand corner was May 10th, 2000, and the Austin Police
8 Department is supposed to come back to us on Wednesday of this
9 week to see what we're going to get.

10 But this was some material from their file that the
11 prosecution was trying to obtain as early as May 10th in that
12 it gives some specific information about people's names and
13 cities and countries where these people had reported that they
14 had seen the three missing O'Hair Murrays and another city,
15 two ministers at a convention reporting that they saw Ms.
16 O'Hair.

17 Rather than me try to do an international
18 investigation during trial with limited resources, we would
19 like the prosecution to present us with the follow-up on those
20 reports that has been done. It may be that these people were
21 interviewed, and it turned out that they were wrong.

22 But anything that's been done to follow up on these
23 specific sightings -- and we could give the exact cities and
24 countries and names, although they have them. They gave the
25 information to us. It would help us if we got some follow-up

1 if we think we're entitled to that under Brady.

2 MR. CARRUTH: The report to which he relates that
3 we've seen -- that I've seen is a report relating to the
4 recovery of Robin O'Hair's automobile in the airport in
5 Austin. We subsequently investigated and found out that it
6 was actually discovered by the airport police. And I'd like
7 to remind to the Court that we do not have and have not had
8 the missing person's file from the Austin Police Department.
9 They're not under our control.

10 The record will reflect that any file in 1998, we had
11 a sit-down meeting with state and federal investigators and
12 specifically invited the Austin Police Department to join in
13 our investigation and they declined. They continued to treat
14 it as a missing person's case. After the evidence, we believe
15 that it was otherwise. So he's asking for records that we've
16 never had and the Austin Police Department --

17 THE COURT: He says he obtained it from you.

18 MR. CARRUTH: He did. He did and we just gave it to
19 him yesterday, and what that report relates to is the finding
20 of the automobile.

21 MR. T. MILLS: It's not at all --

22 MR. CARRUTH: I have one page of that report.

23 THE COURT: Well, do you have it?

24 MR. T. MILLS: Yes, sir.

25 THE COURT: Why don't you show it to Mr. Carruth?

1 MR. T. MILLS: Yes, sir. I'm not at all referring to
2 a finding of an automobile.

3 MR. CARRUTH: Well, I've never seen that report.

4 MS. WILLIAMS: This is the report that you gave us
5 yesterday.

6 MR. CARRUTH: Well, my agents gave it to you. We have
7 thousands of documents in the file, but I don't think there's
8 going to be any -- our first witness or second witness will
9 testify there's been several reported sightings of the
10 O'Hairs. I don't think that's an admission.

11 THE COURT: Well, let's try to narrow it to some
12 degree. Is this an Austin Police Department report?

13 MS. WILLIAMS: Your Honor, this is what appears to be
14 a printout of all of the investigative narratives entered onto
15 a computer by Austin Police Department detectives
16 investigating the missing person's report. On several
17 occasions, there are indications that they've gotten tips from
18 Interpol on sightings of the Murray O'Hairs.

19 The report additionally indicates that there was
20 continuing contact between the Austin Police Department and
21 Donna Cowling of the FBI and Ed Martin of the Internal Revenue
22 Service throughout this missing person's report.

23 So it would be our position that the government has a
24 duty to seek out more information, if such exists, about these
25 sightings of the Murray O'Hairs under Brady.

1 THE COURT: Well, the Travis County and city of Austin
2 materials are to be pursuant to your subpoena, delivered and
3 the continuing objections at 1:30 on Wednesday. So it may
4 well be that that will be resolved. I doubt it. Nothing
5 seems to resolved in this case.

6 I feel confident that the United States Attorney's
7 Office will provide and has provided any Brady material. If
8 that is not the case and it's brought to my attention, I will
9 deal with it heavily. But it does trouble me, and I know
10 we've got a lot of material here that troubles me where you
11 get this material. And Mr. Carruth states in court that he's
12 never seen the document before.

13 But we've got a jury waiting. I'm going to select the
14 jury, and we'll handle this as we go. Hopefully, it will be
15 resolved Wednesday.

16 MS. WILLIAMS: Thank you, your Honor.

17 THE COURT: Where are we on the jury?

18 THE CLERK: They need a few more minutes.

19 MR. CARRUTH: We have one more brief matter, your
20 Honor. As indicated to the Court Friday, we filed this
21 morning a motion in limine regarding certain photographs that
22 may be deemed obscene or pornographic.

23 THE COURT: I have not -- let's see. I have not --

24 MR. CARRUTH: It was filed along our requested jury
25 instructions and our exhibit list this morning, about 8:00.

1 THE COURT: Okay. Well, Ms. Sims, would you go see if
2 the Clerk's Office will give me my copies --

3 THE CLERK: Yes.

4 THE COURT: -- and find out who had them. It's my
5 understanding, Mr. Carruth, that the pictures are in your
6 exclusive possession.

7 MR. CARRUTH: The pictures came out of the search
8 warrant of Waters' residence pursuant to an earlier
9 instruction of this court. They were shown to defense
10 attorney, but I have them in my exclusive possession.

11 THE COURT: To your knowledge, there are no copies, so
12 nobody can present them except you. But you're asking for no
13 reference at this time?

14 MR. CARRUTH: Yes, sir. Asking that he be instructed
15 to approach the bench if, in fact, there's any way --

16 THE COURT: All right. Well, let me see the pictures.

17 MR. CARRUTH: May I approach the bench?

18 THE COURT: Yes, sir. Who are the people? Who is,
19 quote, Dewayne?

20 MR. CARRUTH: That is the husband of the witness, your
21 Honor.

22 MR. CARRUTH: I believe it's Dewayne.

23 THE COURT: Okay. Let the record reflect I've
24 reviewed the pictures. What is the position of the defendant?

25 MR. T. MILLS: The defense believes that when the

1 young lady testifies, that she was deathly afraid of David
2 Waters and believed that he was a villain, a murderer, that it
3 is inconsistent with that for her to be continuing to live in
4 his apartment with him, having activities with other people --

5 THE COURT: Well, what connection did Waters have with
6 these pictures?

7 MR. T. MILLS: It's just that it's his apartment.

8 THE COURT: Just because she was doing all this stuff
9 in his apartment?

10 MR. T. MILLS: Right.

11 THE COURT: Grant the motion in limine. Approach the
12 bench if you want to get into it. Don't get into it before.
13 I have four sons. I just hesitate to think what happened in
14 my house on occasion when I wasn't there.

15 All right. Government's motion in limine will be
16 granted. All right, counsel. You folks -- y'all don't have
17 to stand up, but I don't want you intermingling with the
18 jurors. I've got an extraordinary large number of jurors.
19 The overwhelming majority will be screaming to get out of
20 here.

21 So what I want you to do is take the last two rows
22 over here to my right and your left. That ought to
23 accommodate you best we can, and hopefully, we will be able to
24 accommodate you and keep you there during the jury selection.

25 I don't want anybody screaming, taking off their ties

1 and shouting, that type of thing. No chuckling, no laughing
2 except when the jury panel laughs. And if you're too quick,
3 you get out. Okay. But make yourself comfortable best you
4 can. As you probably are aware, I intend to try this case
5 down on the first floor where seating is limited. But you can
6 see in that courtroom, and I always feel like I'm in a dungeon
7 here.

8 All right. We are just awaiting the jury. So help me
9 now when I announce to them we have scheduled these cases for
10 three weeks, I want to be sure we're going to be through in
11 that three weeks because traditionally in June, people are
12 going to be on their vacations with their children. The last
13 week of this trial, children will be home, not in school. Mr.
14 Carruth.

15 MR. CARRUTH: Your Honor, we pointed this out to the
16 Court early on when the case was set and indicated a
17 reluctance because of the holiday weekend. We asked for three
18 weeks, which is 15 days, and we ended up, I think, getting
19 eleven days. We have two four-day weeks and then, a three-day
20 week. So that's not three or four weeks. And we will make
21 every effort, your Honor, to expedite the trial, but there are
22 numerous witnesses.

23 THE COURT: I intend to go Tuesday through Friday.

24 MR. CARRUTH: You told us Tuesday through Thursday is
25 what you indicated, your Honor. We have a Friday docket, I

1 believe.

2 THE COURT: It just depends, but if I can get that
3 case to the jury, if that's where it's going to go, that's
4 what I'd like to do on --

5 MR. CARRUTH: We have asked Mr. Mills for a written
6 stipulation on many of the witnesses who are just custodian of
7 the records we're having to bring in because they have not
8 signed a written stipulation we presented to them two weeks
9 ago.

10 THE COURT: He indicated that wasn't going to be a
11 problem. Are you going to be taking authenticity objections?

12 MR. T. MILLS: We wrote Mr. Carruth a letter.

13 THE COURT: Yes or no, because if you are, I tell the
14 jury. You're hearing all of these cases because the lawyers
15 will not stipulate to authenticity. It is a constitutional
16 right they have, but they are wasting your time and mine.

17 MR. T. MILLS: We have agreed to stipulate to many --
18 I would say as many as a dozen.

19 MS. WILLIAMS: More than that.

20 MR. T. MILLS: All right.

21 MR. CARRUTH: But there are probably about 30 of them.

22 THE COURT: Well, you know, I can't help that. Take
23 too much time with this jury, I will not hesitate to tell the
24 jury who is taking time, although I don't think anybody needs
25 my assistance in that.

1 MR. T. MILLS: With regard to the length of the trial,
2 Judge, we are going to have several days of defense evidence,
3 and if we're -- I just don't know what to do if the government
4 could call witnesses until the end of the three-week period.

5 THE COURT: I guess you'll just call your witnesses
6 after the end of three weeks.

7 MR. CARRUTH: Yes, sir.

8 THE COURT: What I'm hearing is that there's a
9 possibility it could go over three weeks. Both of you
10 understand the consequences on the jurors. Seems to me that
11 you should be interested in trying to get the best jury that
12 you can. But I just have this hunch that y'all are prolonging
13 this trial for every purpose.

14 All right. Recess till the jury.

15 (Recess.)

16 JURY VOIR DIRE

17 THE COURT: Welcome, ladies and gentlemen, to the
18 United States District Court for the Western District of
19 Texas. How many of you are from outside of Travis County?
20 And how many of you were surprised to get our invitation? You
21 may put your hands down.

22 The Western District of Texas is the largest federal
23 district in the United States. It also has the heaviest
24 docket of any district in the United States. It runs from
25 Austin to San Antonio to Del Rio, all the way to El Paso, back

1 through Midland, Odessa, and then, coming back into Waco,
2 almost 600 miles from any courthouse.

3 And the law requires that we draw our jury panels
4 proportionately to the population, and the population in the
5 federal government is the voter registration from each of the
6 counties. So that's why many of you got up early this morning
7 and joined, hopefully, a nice clear morning to drive to Austin
8 and be welcomed.

9 Each of you have been qualified to be jurors in the
10 United States District Court, but the process we're about to
11 start will be to see if you are qualified to serve as a juror
12 in this case. The procedure, for those of you who have never
13 been through the procedure before, is fairly simple. It's
14 kind of like musical chairs for a while.

15 We are very high-tech here in Austin. All of your
16 names have been placed into a computer. Show them our
17 computer. And from that computer, 35 names will be drawn.
18 Mr. Mace, who is at my right and to most of your left, is in
19 charge of the courtroom, and he will show you where to sit.
20 Thirty-five people will be called up here. That's what we
21 call the jury panel. But that doesn't mean the rest of you
22 can go home or go to sleep because, then, we will attempt to
23 qualify from that number 15 to be the jurors in this case.

24 Now, many of you probably have been listening and
25 seeing over in Louisiana, they just completed a trial seven

1 months for the former governor. The good news is that the
2 case that I'm selecting today is not going to take seven
3 months, but it is going to take four weeks. Four weeks and
4 there are no economic excuses that can be utilized. We all
5 have them.

6 It is going to be an interesting case, but it also is
7 going to be one where we need people who understand that this
8 is the base point of our democracy, and that is that we have
9 jurors who will make a determination in this case. It is a
10 criminal case.

11 And we are looking for jurors who follow this
12 definition, who can stand up here on your oath -- you've
13 already taken the oath, so everybody is under oath -- and
14 state to the parties and to me that I will listen to the
15 evidence in this case, I will put away whatever life
16 experiences that generally influence me, and I will follow the
17 Court's instructions, and I will make a determination in this
18 case based solely on the evidence that I hear following the
19 instructions of the Court after deliberating with my fellow
20 jurors.

21 The point is in the United States and our jury system,
22 we're the only ones in the world with an unlimited jury trial.
23 The point is that the jurors who are selected in this case
24 will hear every single word of testimony together, they will
25 be able to review every single document, picture, or whatever

1 is admitted into evidence together, and they will deliberate,
2 that is, discuss that evidence after all of it is in, and come
3 to a verdict based solely upon what they have observed
4 together.

5 So what's in the newspapers, what's in the television,
6 what's in conversations at home, that's all immaterial. And
7 there are some restrictions about what you are to do in the
8 event you're selected to be a juror in this case, which I will
9 go over with you. But, basically, that's what we are looking
10 for.

11 Now, some people under oath might not be qualified to
12 be jurors in this case. I usually tell you that, for example,
13 my father was a football player at the University of Texas. I
14 went to the University of Texas, also, on an athletic
15 scholarship, and if called upon to be the umpire at a Texas A
16 & M/Texas game, I don't think I'll be -- and I will have to
17 say that I have some problem with that even though two of my
18 daughter-in-laws are graduates of A & M.

19 But now -- and let me give you another example. There
20 are some people who, for whatever reason, have a genuine
21 belief that marihuana ought to be legalized, but at the
22 present time, it not legalized, and those same people can be
23 called upon to be a juror in that case and under their oath,
24 even though their own feelings might be different, they follow
25 the law and follow the legal instructions when evaluating the

1 evidence. And that's what we have here today.

2 So please remember, we will try to be as efficient as
3 possible. If you have any questions, do not hesitate to get
4 Melissa or Mr. Mace, who you will now meet, or speak up. I
5 will be trying to ask questions today basically for "Yes" and
6 "No" answers. And after you have given a "Yes" or "No"
7 answer, I might be calling you up at another time to ask you a
8 little bit more about different things.

9 The lawyers in federal court do not ask questions. I
10 ask the questions, and we'll be qualifying a jury. So listen
11 carefully. There are no awards for the first person called.
12 Those of you who go and play bingo and win all the time,
13 you're going to be called, so you mine as well get ready.
14 Those of you, like myself, who have never won a bingo game may
15 not be called. But when your name is called, if you'll come
16 up, please, and Mr. Mace will seat you.

17 MS. HAJDA: Juror No. 152, Susanna Medrano.

18 THE COURT: Just play like we're in court.

19 MS. HAJDA: Juror No. 44, Ronnie Senkel, Juror No.
20 341, Jeffrey Babcock, No. 301, Robert Sahlen, No. 233, Jeffrey
21 Sloan, No. 192, Terry Olguin, No. 289, Kenny Sisk, No. 89,
22 Kenneth Ittigson, No. 293, Blake Patterson, No. 161, Kathryn
23 Hartsell, No. 285, Ernestina Paiz, No. 288, Connie Brown, No.
24 41, Dinorah Martinez-Anders, No. 239, Tom Hurt, No. 134, Mark
25 Wilkerson, No. 190, Lewis Goodley, No. 165, Dayton Grumbles,

1 No. 182, Gloria Mislinski, No. 133, William Brunton, No. 328
2 Betty Joyner, No. 6, Steven Klein, No. 338, Donald Scott, No.
3 197, Darron Fleming, No. 344, Patrick Rhode, No. 205, Hector
4 Rodriguez, No. 72, Tamika Trotman -- Ms. Trotman is absent
5 today; don't count that one. Cheryl Copeland, No. 64, No.
6 232, David Lapotin, No. 366, Dick Schieffer, No. 149, Virginia
7 Garcia, No. 13, David Laurie, No. 230, Charles Peters, No.
8 294, Kelley Ruud, No. 193, David Braley, No. 179, Clarke
9 Parris, and No. 355, Pat Gainer.

10 THE COURT: Y'all kind of move together, kind of like
11 church, move together and we'll try to get as many people
12 seated as possible.

13 Ladies and gentlemen of the jury panel, though it may
14 look like it, I'm not 18 years old and I'm not very naive. I
15 know that all of you are sitting down there saying, you know,
16 I hope I get on this jury that's going to last for four weeks.
17 We try our best to be as efficient as we can in the
18 administration of justice.

19 I have hopes that this case will be over in three
20 weeks. I don't have much hope that it's going to be over less
21 than that. But I don't believe in telling somebody something
22 when I think the probability is otherwise and the case could
23 last as long as four weeks.

24 Now, is there anybody in your number who wishes to
25 give me a reason that you can't serve? Now, first, let me

1 tell you that economic reasons are not going to be acceptable
2 because everybody has that. Everybody, to some degree, is
3 responsible for duties, teaching school, grades. I know that.
4 I know it is an imposition to serve on a jury. But in my
5 lifetime, since 1963, I've been involved in this process, and
6 for those of you who have served on juries, you're probably
7 aware that it is more important than this.

8 But I'll be glad to listen to any of you who feel, for
9 whatever reason, that you would not be able to be a juror in
10 this case for that period of time. And I ask you to call upon
11 your own conscience before you stand up. And I may or may not
12 allow some of you off. It just depends.

13 For example, anybody has somebody who's ill, going to
14 have surgery, children with parents, that type of thing,
15 that's something that's scheduled and probably have no way of
16 knowing that you were going to be called up here for a
17 possible three- to four-week trial.

18 So we try to iron these out, but that is why we have a
19 large number of people. So I'll start with the front row. Is
20 there any of you on this front row who feel that you just
21 simply, because of some imposing problem, would not be a juror
22 in this case? Yes, ma'am. Now, when you stand, if you will,
23 tell me your name and number, because the Court Reporter,
24 right down here, has to record both.

25 If you can't remember your number, Melissa will give

1 it to you free. Second one costs you a quarter.

2 THE JUROR: Oh, okay. My name is Kathryn Hartsell.
3 I'm Juror No. 161. I have a twelve-year-old daughter that I
4 have a conflict being on a trial for four weeks in the account
5 that she has band camp that I just found out about last week
6 for a two-week period. And we have -- she has a doctor
7 appointment that I've got scheduled for next week.

8 I'm afraid that I would not be totally impartial in
9 being in a trial that length of time. I have to take my
10 daughter to and from band camp, and the hours are from 9:00 to
11 11:45 during the day. She has to be there.

12 THE COURT: All right. Have a seat for a second. Let
13 me tell you, also. This is my error. When I say three, four
14 weeks of trial, let me tell you what that means in the federal
15 court. That means -- and it won't help this lady, but that
16 means Monday through Thursday. Everybody will have Friday off
17 for everything that you need to do, unfortunately.

18 That is going to go to -- first two weeks will be
19 Monday through Thursday. Because there is a holiday on the
20 29th, that week will be Tuesday through Friday. And I'm
21 hopeful that we'll be through by then.

22 But I also am a practical person, and I think there's
23 a possibility of going into that first week in June. All
24 right. Now, you had nobody else at home that can do this?

25 THE JUROR: My husband works full-time and travels 90

1 percent of the time, so no.

2 THE COURT: All right. Just have a seat. And, I'm
3 sorry, your name again?

4 THE JUROR: It's Kathryn Hartsell.

5 THE COURT: Hartsell. All right. Anybody else on the
6 front row? Yes, ma'am.

7 THE JUROR: Ernestina Paiz, and I have a six-year-old
8 granddaughter in my care which I drive to and from school, and
9 I was just wondering, you know, it's kind of hard. My husband
10 works all the time, and I've kind of, you know, am the primary
11 caretaker of her. So I don't know if you will excuse me.

12 THE COURT: Do you have anybody else there at the
13 home?

14 THE JUROR: I have an 18-year-old daughter, but she
15 works.

16 THE COURT: Your name?

17 THE JUROR: Ernestina Paiz, 285. Uh-huh, No. 285.

18 THE COURT: All right. Have a seat. Anybody on the
19 second row? Yes, ma'am.

20 THE JUROR: My name is Betty Joyner, No. 328. I'm a
21 precalculus teacher. We're going into the end of the year.
22 We have two major tests coming up that I have to prepare my
23 children for. AISD does not have subs who can do my job. If
24 I'm not there, it just won't get done.

25 THE COURT: We all have our views of AISD. I'm a

1 graduate of that. What school do you teach?

2 THE JUROR: I teach at Bowie High School. As you
3 know, we're going into finals. It's just this would be a real
4 -- really a great hardship on my students.

5 THE COURT: All right. Ms. Joyner, thank you.
6 Anybody else on the second row? Don't all of you sprain your
7 wrists. All right. Let's start with you.

8 THE JUROR: Yes, sir. My name's Mark Wilkerson, Juror
9 134, and I'm actually on vacation this week and next week.

10 THE COURT: Congratulations. This is your annual
11 vacation?

12 THE JUROR: Yes.

13 THE COURT: Well, why didn't you follow the
14 instructions and --

15 THE JUROR: I didn't get a letter on time, sir.

16 THE COURT: Okay. Mr. Wilkerson, have a seat. Next,
17 please, on that row. Yes, sir.

18 THE JUROR: My name is William Brunton, Juror 133.
19 I'm just self-employed and would not be compensated for that
20 time frame.

21 THE COURT: That's true and I know that, and there's a
22 lot of people here -- tell me a little bit about your
23 business, sir.

24 THE JUROR: I'm a Sprint PCS reseller, and basically,
25 I have an office downtown that won't be run unless I'm there.

1 I'm responsible for 14 --

2 THE COURT: You don't have anybody else at that
3 office?

4 THE JUROR: Just basically is myself in the office.

5 THE COURT: Your name?

6 THE JUROR: William Brunton.

7 THE COURT: All right. Mr. Brunton. All right.
8 Anybody? Yes, sir.

9 THE JUROR: My name is Darron Fleming, Juror No. 197.
10 I'm currently scheduled to be out of town Thursday and Friday
11 of this week on business-related travel, and the week of June
12 the 5th for business travel, as well.

13 THE COURT: Okay. Have you cleared that through the
14 Clerk's Office?

15 THE JUROR: I have not. I have documentation. I can
16 send in for that.

17 THE COURT: Well, if you had sent in the
18 documentation, just like Mr. Wilkerson, you wouldn't be here.
19 Since you are here, you know, it's costing the taxpayers 40
20 bucks plus expenses for you to tell me the information that
21 you could have -- see, I'm not trying to jump on you. Other
22 people have done this, but the problem is if you just follow
23 the instructions -- I keep an entire staff and they do nothing
24 but work the jurors.

25 THE JUROR: Yes, your Honor, this travel came up for

1 schedule last week.

2 THE COURT: All right. Have a seat. Anybody else on
3 the second row? Or the third row? Start with you, sir.

4 THE JUROR: David Lapotin; I'm 232. I actually
5 received the letter excusing me from the 16th to the 19th,
6 which is the remainder of this week and, also, June 5th to
7 June 9th.

8 THE COURT: I don't know if I can hear. What is your
9 name?

10 THE JUROR: Lapotin, L-A-P-O-T-I-N.

11 MS. HAJDA: I missed one.

12 THE COURT: Well, we don't have enough Marshals to
13 take Melissa to jail, but that's where she would be. Yes,
14 sir.

15 THE JUROR: Juror No. 366, Dick Schieffer.

16 THE COURT: Yes, Mr. Schieffer.

17 THE JUROR: I'm an independent rancher, and I have
18 about 200 head of livestock that I need to make sure that they
19 have water every day. I've got some sick livestock that I
20 give shots to every day.

21 THE COURT: Whereabouts do you ranch?

22 THE JUROR: Marble Falls, 58 miles from here.

23 THE COURT: Was when I was growing up, too.

24 THE COURT: Thank you. Next?

25 THE JUROR: Juror No. 13, Dave Laurie. I'm an

1 independent contractor and would not be compensated for this
2 period of time either.

3 THE COURT: Okay. And your name again, please?

4 THE JUROR: David Laurie.

5 THE COURT: Mr. Laurie, most of everybody here is not
6 going to be compensated for that period of time. Yes, except
7 the government is a little bit better than Civil Service. I'm
8 sorry. If you'll stand, please. No, no, not Mr. Laurie, the
9 gentlemen next to you.

10 THE JUROR: Charles Peters, 230, juror number. I'm a
11 diabetic and I have good days and bad days, and some of my bad
12 days are really bad.

13 THE COURT: Are you on shots or pills?

14 THE JUROR: Pills, sir, Type II.

15 THE COURT: Anybody else on the third row? Yes, sir.

16 THE JUROR: My name is Clark Parris, Juror 179, and
17 I'm working for the U.S. Census Bureau, and I have a very
18 heavy case load over the next two months. And currently,
19 like, this week, I need to catch the remaining U.T. students
20 before they leave because they're not counted at their home,
21 but they're counted at the university.

22 THE COURT: Anybody else that I missed?

23 THE JUROR: Your Honor --

24 THE COURT: Yes, sir.

25 THE JUROR: -- Patrick Rhode, Juror No. 344. I wonder

1 if I can speak in private.

2 THE COURT: Yes, that's a right that you have sort of
3 in private. It's not really in private. Every lawyer is
4 going to come up here, but you can come forward, please.

5 (At the Bench, on the record.)

6 THE JUROR: I'm sorry. I work for Governor Bush as
7 part of his campaign staff. I'm required to do a lot of
8 travel. I don't know for certain if I will be asked to do
9 that sort of travel, but I do an awful lot of it. I can't say
10 for certain what I'll be doing over the next couple of weeks,
11 but that is a conflict.

12 THE COURT: Okay.

13 THE JUROR: And, also, my wife is a very high profile
14 anchor in Austin with --

15 MS. WILLIAMS: What?

16 THE JUROR: My wife is Leslie Rhode with KXAN
17 Television, and I just want to bring that up.

18 THE COURT: I won't get into that kind of thing.

19 THE JUROR: I didn't know if now was the time or not,
20 but I did want to bring that up.

21 THE COURT: Okay. Thank you.

22 THE JUROR: Thank you very much.

23 THE COURT: Anybody else? All right. Ms. Hartsell,
24 Paiz and Joyner, y'all are excused now from this case. And
25 because of the seating arrangement, I'm going to excuse you

1 till 1:30 today. 1:30, please be back in the jury room
2 because there are three other judges that might be able to use
3 your services. So y'all may be excused. Mr. Wilkerson,
4 Bunton and Fleming, y'all may be excused.

5 THE JUROR: What was the second name?

6 THE JUROR: Bunton. Mr. Lapotin, you are already
7 excused. And my apologies for you even being here. I'll take
8 that up later with Melissa. Mr. Schieffer, you may be
9 excused. Mr. Peters, you may be excused. The rest of you get
10 to tough it out with me. And by the way, I have four sons,
11 seven grandchildren. I've been in this job almost ten years.

12 Anything -- you can't cuss me out of what I haven't
13 been cussed out before. It's America, you can do anything you
14 want, just don't let me hear you.

15 All right. Well, let me tell you while the lawyers
16 and the Clerk are making up their records, as your name is
17 called, they will call your names in their forms. It's too
18 many people to memorize everybody that comes up, so we're
19 going to have to give them just a second or two to make sure
20 they have the appropriate people. And then, we're going to
21 call others of you up.

22 MS. HAJDA: Juror No. 241, Nanci Wilson, replacing No.
23 161, Kathryn Hartsell.

24 THE COURT: Ms. Wilson, I'm not going to ask you if
25 you're dying to be here the next several weeks, but can you be

1 here?

2 THE JUROR: The only thing that I've scheduled is an
3 out-of-town trip on the 30th through the first of June, which
4 is three weeks away.

5 THE COURT: Well --

6 THE JUROR: Maybe work on Fridays --

7 THE COURT: The 30th, we're not going to work.

8 THE JUROR: Pardon? But it's the 30th through the 4th
9 that I'll also be gone.

10 THE COURT: 30th of May is on a --

11 THE JUROR: Tuesday.

12 THE COURT: I anticipate that we will work the 30th,
13 31st, the 1st, and the 2nd of that week.

14 THE JUROR: What if we work on Fridays in between?

15 THE COURT: The difficulty is it is so difficult for
16 people to do this type of service. And in federal court, we
17 could go for months. I've gone three and a half months in a
18 trial, and people just need some time. So I never make a
19 juror come five full days on -- what type of trip is it? Just
20 a vacation?

21 THE JUROR: No. It's a business conference and
22 meetings.

23 THE COURT: All right. I'll let you stay on. Don't
24 think I'm getting easy, ladies and gentlemen. If you think
25 this isn't hard, you're wrong, because I know that anybody

1 selected to be a juror on this case, no matter how dedicated
2 an American you are, it's a hardship. There's no question
3 about that. But there's not anybody in the courtroom that
4 doesn't know that.

5 All right. Call the next name.

6 MS. HAJDA: Juror No. 363, Heather Taylor, replacing
7 No. 241, Nanci Wilson.

8 THE COURT: Ms. Taylor, how about you?

9 THE JUROR: May I speak to you in private?

10 THE COURT: Yes, ma'am, you may.

11 (At the Bench, on the record.)

12 THE JUROR: I would be honored to serve. I'm
13 pregnant. I just don't know about the emotional strain I can
14 handle. And today, I have a sonogram scheduled.

15 THE COURT: I'm going to let you go.

16 THE JUROR: Thank you.

17 MS. HAJDA: Juror No. 250, Merry Walker, replacing No.
18 363, Heather Taylor.

19 THE COURT: Ms. Walker, how about you?

20 THE JUROR: Fine, I guess.

21 THE COURT: I'll accept that. Call the next name.

22 MS. HAJDA: Juror No. 318, Teresa Roy, replacing No.
23 285, Ernestina Paiz.

24 THE COURT: Ms. Roy, how about you?

25 THE JUROR: Okay.

1 THE COURT: Thank you. Good, Melissa, you're on a
2 roll.

3 MS. HAJDA: Juror No. 35, Glenn Chiappe, replacing No.
4 134, Mark Wilkerson.

5 THE COURT: Mr. Chiappe, how about yourself?

6 THE JUROR: Well, your Honor, it's not only economic
7 factors involved here, but my job requires frequent out of
8 town. I'm out of town this Wednesday in San Antonio for
9 meetings that are planned, and I greet guests from out of
10 town. I pick some up at the airport. Tomorrow's the same. I
11 pick some up at the airport at 6:00. We'll have seminars set
12 up at Seeman's Corporation that's been set up for over four
13 weeks.

14 THE COURT: All right. I'm sorry, your name again?

15 THE JUROR: Glenn Chiappe, Juror No. 35.

16 THE COURT: Put Mr. Chiappe down for the middle of the
17 summer. Give him plenty of notice. I'll let you off this
18 time. I'm going to give you some time where you can have less
19 out-of-town guests, and you can tell them when not to come.

20 THE JUROR: Sure, we could block that time in the
21 future, sir.

22 THE COURT: All right. No. 245, John Donovan,
23 replacing No. 134, Mark Wilkerson. Mr. Donovan, how are you
24 doing today?

25 THE JUROR: I'm fine, sir.

1 THE COURT: Good. We'll suffice that to be a
2 conversation.

3 MS. HAJDA: Juror No. 87, Marcos Gonzales, replacing
4 No. 133, William Brunton.

5 THE COURT: Mr. Gonzales, how are you for the next
6 several weeks?

7 THE JUROR: I've got something going on June 14th.

8 THE COURT: We'll have you through. You're going to
9 make that June 14th.

10 THE JUROR: All right.

11 MS. HAJDA: Juror No. 56, Avelina Castilleja,
12 replacing No. 328, Betty Joyner.

13 THE COURT: Ma'am, how are you doing?

14 THE JUROR: All right.

15 THE COURT: Okay.

16 THE JUROR: I can reschedule what I can have.

17 THE COURT: I appreciate that.

18 MS. HAJDA: Juror No. 273, Shirley Carter, replacing
19 No. 197, Darron Fleming.

20 THE COURT: Ms. Carter, how about you?

21 THE JUROR: The doctor has just decided to induce my
22 son's wife Thursday morning, and I need to keep the other
23 children.

24 THE COURT: You may have your seat back.

25 MS. HAJDA: No. 157, Christopher Bittick, replacing

1 No. 273, Shirley Carter.

2 THE COURT: Mr. Bittick, how about your schedule?

3 THE JUROR: All right.

4 THE COURT: Good.

5 MS. HAJDA: Juror No. 99, Rosie Amaro, replacing No.
6 232, David Lapotin.

7 THE COURT: Are you all right?

8 THE JUROR: (Moving head up and down.)

9 THE COURT: Got a seat waiting for you.

10 MS. HAJDA: Juror No. 191, Rose Powley, replacing No.
11 366, Dick Schieffer.

12 THE COURT: Ms. Powley, how about you?

13 THE JUROR: I'm fine.

14 THE COURT: Good. You're ahead of most of us.

15 MS. HAJDA: Juror No. 71, Gary Leasman, replacing No.
16 230, Charles Peters.

17 THE COURT: Mr. Leasman, how about you, sir?

18 THE JUROR: Fine.

19 THE COURT: All right. Counsel up. No, no. Got
20 everything down?

21 THE JUROR: (Moving head up and down.)

22 THE COURT: All right. All right, members of the jury
23 panel. As I told you, this is going to be a criminal case in
24 the United States District Court. A criminal prosecution is
25 the responsibility of what we call the United States

1 Attorney's Office. And today, we have Mr. Gerald Carruth, Mr.
2 Dan Mills, Mr. Robert Pitman of the United States Attorney's
3 Office here. They are the three gentlemen who just stood up.

4 Is there anybody on the panel who knows any of those
5 people? Is there anybody on the panel who think you may know
6 anybody in the United States Attorney's Office here in the
7 Western District of Texas whether it be in Austin or
8 elsewhere? Yes, sir.

9 THE JUROR: I was a news reporter in San Antonio for
10 an extensive time.

11 THE COURT: I'm going to have to get your name and
12 number.

13 THE JUROR: I'm sorry. Kenny Sisk, 289.

14 THE COURT: All right.

15 THE JUROR: And I was UPI and AP during the Judge Wood
16 trial and covered numerous cases in the San Antonio Federal
17 Courts.

18 THE COURT: The fact that some of those folks may
19 still be around, would that influence you in any way, shape or
20 form?

21 THE JUROR: I don't think so.

22 THE COURT: Let me tell you the "I don't think so" is
23 kind of like a horseshoe. I don't like to get that from folks
24 that do not know.

25 THE JUROR: No, sir, I don't think so. Yes, sir.

1 THE JUROR: Yes, your Honor. Parris, Juror 179. And
2 I'm not adverse to doing my civic duty, but I gave you, I
3 thought, my most cogent argument for not participating on this
4 jury. But I do have one other argument I would like to
5 present and that is that my son is graduating from high school
6 -- from Bowie High School next week.

7 And my mother, who is 82 and somewhat infirm, is
8 coming down here on Monday, and I need to pick her up at the
9 airport and spend a lot of time with her. There's no one else
10 around because my wife also teaches at Bowie High School, and
11 I need to spend time with her during the day. And I would be
12 glad to be on your next jury once -- whenever one comes up.

13 THE COURT: All right. I'm going to let you step
14 back. I want you back here at 1:30 today. 1:30 today, we've
15 got several other juries you might be selected on the next
16 couple of weeks and --

17 THE JUROR: Thank you, your Honor.

18 THE COURT: Don't thank me because I'm not happy about
19 it. All right. Just call another name.

20 MS. HAJDA: Juror No. 158, David Boxley, replacing No.
21 179, Clark Parris.

22 THE COURT: Mr. Boxley --

23 THE JUROR: Yes, sir.

24 THE COURT: -- how is your schedule?

25 THE JUROR: It's okay.

1 THE COURT: Mr. Boxley, do you know anybody in the
2 U.S. Attorney's Office?

3 THE JUROR: No, sir.

4 THE COURT: Now, the defendant in this case is Mr.
5 Gary Paul Karr. Mr. Karr, if you'll stand. He is represented
6 by Mr. Thomas Mills and Christie Williams. Anybody else at
7 your table, Mr. Mills, if you would introduce?

8 MR. T. MILLS: Yes, Mr. Harvey Jury, J-U-R-Y.

9 THE COURT: All right. Y'all may be seated. Anybody
10 on the panel know any of these folks? I'm going to ask, in a
11 minute, if you have ever heard of these folks. And we're
12 going to go into questions like that in a minute, but right
13 now, what I'm going to ask is the United States Attorney to
14 take the lectern and to read the indictment that is pending in
15 this case.

16 And before he starts reading the indictment, let me
17 tell you what an indictment is. Those of you that had civics,
18 like I did in Austin High School in the AISD, knows that an
19 indictment is a pleading from a grand jury that simply says
20 that there is a criminal charge. Once the indictment is filed
21 and the criminal charge is filed, there is no significance to
22 the indictment.

23 It is no evidence of guilt or wrongdoing. It simply
24 tells me what this case is about. It tells the defendant and
25 his counsel what this case is about, and by exclusion, it

1 tells us what it's not about. It's simply the charges in this
2 case.

3 Now, is there anybody on the panel who doesn't
4 understand that? Who does not understand that it's not
5 evidence of any wrongdoing at all the fact that there's an
6 indictment in this case? If you do not understand that, raise
7 your hand, and I'll be glad to explain. All right. You may
8 proceed.

9 MR. CARRUTH: Thank you, your Honor. This is a case
10 of The United States of America vs. Gary Paul Karr. The grand
11 jury for the United States District Court for the Western
12 District of Texas charges in Count 1 that beginning in or
13 about April 1995 and continuing until in or about October
14 1995, in the Western District of Texas and elsewhere, the
15 defendant, Gary Paul Karr, aided and abetted by other persons,
16 did knowingly and willfully combine, conspire, confederate and
17 agree with other persons to unlawfully seize, confine,
18 inveigle, decoy, kidnap, abduct and carry away and hold for
19 ransom or reward and financial gain Madelyn Murray O'Hair,
20 John Garth Murray and Robin Murray O'Hair with intent to
21 willfully transport one or more of the said victims in
22 interstate commerce contrary to the federal law.

23 Pursuant to and in furtherance of the conspiracy, the
24 following overt acts, among others, were committed by the
25 defendant in the Western District of Texas and elsewhere: No.

1 1, in or about May 1995, the defendant traveled from the state
2 of Illinois to Austin, Texas. Two, in or about August 1995,
3 the defendant traveled from the state of Florida to Austin,
4 Texas. Three, on or about August 26, 1995, the defendant
5 rented a 1995 Ford Windstar van in Austin, Texas. Four, on or
6 about August 27th, 1995, the defendant drove a Porsche
7 automobile belonging to Robin Murray O'Hair to the Robert
8 Mueller Airport in Austin, Texas and abandoned this vehicle in
9 an airport parking lot.

10 Five, on or about August 28th, 1995, the defendant
11 aided and abetted another person in renting an apartment at
12 the Warren Inn Village in San Antonio, Texas. Six, on or
13 about September 21, 1995, the defendant traveled with John
14 Garth Murray from San Antonio, Texas to the state of New
15 Jersey, and returned to San Antonio, Texas with Murray on or
16 about September 22, 1995.

17 Seven, on or about September 27th, 1995, the defendant
18 rented a 1995 Ford cargo van in Austin, Texas. Eight, on or
19 about September 29, 1995, the defendant followed John Garth
20 Murray to the Frost National Bank in San Antonio, Texas, where
21 Murray received gold coins valued at approximately \$500,000.

22 Nine, on or about October 2, 1995, the defendant
23 rented a 1995 Ford cargo van in Austin, Texas. Ten, on or
24 about October 3, 1995, the defendant rented a room at the Four
25 Seasons Hotel in Austin, Texas. Eleven, on or about October

1 4, 1995, the defendant traveled with another person from
2 Austin, Texas to the state of Florida. And twelve, on or
3 about October 8, 1995, the defendant traveled with another
4 person from New Port Richey, Florida to Naples, Florida, all
5 in violation of the federal law.

6 In Count 2, the grand jury alleges that at all times
7 material to this indictment, American Atheist, Incorporated,
8 doing business as American Atheist Press and United
9 Separatists of America, Incorporated, were corporations
10 engaged in interstate commercial activities in the states of
11 California, New York, Texas -- excuse me, New Jersey rather
12 than New York, California, New Jersey and elsewhere.

13 Madelyn Murray O'Hair, John Garth Murray and Robin
14 Murray O'Hair were incorporators, officers and/or directors of
15 the said corporations involved in interstate travel and the
16 movement and distribution of money, goods and commodities in
17 interstate and foreign commerce.

18 Beginning in or about April 1995 and continuing until
19 in or about October 1995, in the Western District of Texas and
20 elsewhere, the defendant, Gary Paul Karr, aided and abetted by
21 other persons, did knowingly and willfully combine, conspire,
22 confederate and agree with other persons to commit robbery and
23 extortion, and did threaten and commit physical violence to
24 Madelyn Murray O'Hair, John Garth Murray and Robin Murray
25 O'Hair in furtherance of the conspiratorial plan and purpose

1 to commit robbery and extortion by knowingly and unlawfully
2 taking and obtaining personal property valued in excess of
3 \$500,000 including but not limited to United States currency,
4 gold coins, motor vehicles, watches and other jewelry from the
5 person and in the presence of Madelyn Murray O'Hair, John
6 Garth Murray and Robin Murray O'Hair, against their will by
7 means of actual and threatened force, violence and fear of
8 injury, immediate and future, to the said victims.

9 And by obtaining such property from Madelyn Murray
10 O'Hair, John Garth Murray and Robin Murray O'Hair, with their
11 consent, induced by wrongful use of actual and threatened
12 force, violence and fear, and the natural and probable
13 consequences of these unlawful acts by the conspirators would
14 be to obstruct, delay and affect commerce and the movement of
15 articles and commodities including money and other property in
16 commerce.

17 Pursuant to and in furtherance of the conspiracy, the
18 overt acts alleged in Count 1 of this indictment, which are
19 incorporated herein by reference, among others, were committed
20 by the defendant in the Western District of Texas and
21 elsewhere, all in violation of the federal law.

22 The grand jury charges in Count 3 that beginning in or
23 about April 1995 and continuing until in or about October of
24 1995, in the Western District of Texas and elsewhere, the
25 defendant, Gary Paul Karr, aided and abetted by other persons,

1 did knowingly travel in interstate commerce between the
2 Western District of Texas, the state of Florida, the state of
3 Illinois, and the state of New Jersey, and did knowingly use
4 other facilities in interstate commerce including interstate
5 telecommunications and financial transactions affecting
6 interstate commerce to commit a crime of violence, that is,
7 kidnapping and robbery, resulting in the death of another
8 person to further the unlawful activity of extortion contrary
9 to and in violation of the federal law.

10 The grand jury charges in Count 4 that beginning in or
11 about April 1995 and continuing until in or about October of
12 1995, in the Western District of Texas and elsewhere, the
13 defendant, Gary Paul Karr, aided and abetted by other persons,
14 did willfully combine, conspire, confederate and agree with
15 other persons to knowingly engage in a monetary transaction in
16 criminally derived property of a value greater than \$10,000,
17 derived from a specified unlawful activity; that is, the
18 defendant conspired and agreed with other persons to knowingly
19 aid, abet, counsel, command, induce, procure and willfully
20 cause John Garth Murray to travel in interstate commerce
21 between the Western District of Texas and the state of New
22 Jersey for the purpose of facilitating a monetary transaction,
23 namely, the transfer in and affecting interstate and foreign
24 commerce of approximately \$600,000 in funds belonging to the
25 United Secularists of America, Incorporated, and the exchange

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1 of said funds for gold coins valued at approximately \$600,000
2 by, through and to a financial institution, as defined by
3 federal law, in which funds were derived from the specified
4 unlawful activity of kidnapping, robbery and extortion,
5 contrary to and in violation of the federal law.

6 The grand jury charges in Count 5 that in or about
7 October 1995, in the Western District of Texas and elsewhere,
8 the defendant, Gary Paul Karr, aided and abetted by other
9 persons, did knowingly transport in interstate commerce from
10 the Western District of Texas to the state of Florida and
11 elsewhere goods, wares, merchandise and other property valued
12 in excess of \$5,000 including but not limited to money,
13 clothing, watches and other jewelry, knowing the same had been
14 stolen, converted and taken by fraud in violation of the
15 federal law.

16 And this is a true bill of indictment, signed by the
17 foreperson of the grand jury, to the United States District
18 Court of this Austin Division of the Western District of
19 Texas.

20 THE COURT: All right. Of the criminal charges that
21 are charged in this case of which Mr. Karr has pleaded not
22 guilty. Mr. Karr pleads not guilty, of course, that ensures
23 that under our Constitution, there is to be a trial, and
24 that's what we are about today.

25 First off, I've had the indictment read to you so that

1 you know what the charges are and, importantly, by exclusion,
2 you know what the charges are not. Mr. Karr is not going to
3 be on trial for anything other than these specific charges
4 that counsel has just read to you.

5 First, when a person pleads not guilty under the
6 Constitution of the United States, that puts the government on
7 notice that the government in this particular instance, the
8 United States Attorney's Office, has the duty of backing up
9 and presenting evidence on these charges. In the United
10 States, a defendant, when charged by a criminal charge, has no
11 duty whatsoever to present any evidence, has no duty
12 whatsoever to testify, has no duty whatsoever to participate
13 in the trial other than be present.

14 And, importantly, the reverse of that coin is called
15 the presumption of innocence. Anybody in our country who is
16 ever charged with a crime is presumed to be innocent. That
17 presumption is at the very heart of our democracy and at the
18 very heart of our jurisprudence. So is there anybody on the
19 panel -- if so, just raise your hand, I'll be glad to explain
20 it -- that does not understand -- first, the indictment is no
21 evidence of anything -- secondly, in a criminal case, only the
22 prosecution has the burden of presenting evidence; and third,
23 that the defendant -- at this very moment, each of you under
24 our Constitution, must presume that the defendant, Mr. Karr,
25 to be innocent.

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1 First, is there anybody on panel that does not
2 understand that? Second, is there anybody on the panel who
3 cannot represent to these parties and to me that you are doing
4 that and will do that at this time and, that is, require the
5 government to produce evidence and nobody else, and presume
6 Mr. Karr at this point in the procedure to be innocent?

7 If you cannot make that representation under your
8 oath, please raise your hand at this point. All right. Now,
9 anybody on the panel personally know Madelyn Murray O'Hair,
10 John Garth Murray, or Robin Murray O'Hair? I'm not talking
11 about knowing of them. Did anybody know them personally? All
12 right.

13 THE JUROR: Your Honor, Kenny Sisk, Juror 289, as a
14 news reporter, I did cover their news conference here in
15 Austin approximately 18 to 20 years ago, but I didn't know
16 them, like, socially or anything like that.

17 THE COURT: All right. Anybody that's lived in this
18 area probably has known of this family for a long period of
19 time, just like this gentleman here. And, of course, as he's
20 already indicated, they were frequently in the news and are
21 frequently in the news.

22 Now, is there anybody on the panel who, from whatever
23 -- I guess I ought to just ask this question: How many of you
24 have either read about or heard about these folks in the
25 media? Okay. Now, how many of you have heard about or read

1 about this case -- this case in the media? Okay. Well, I'm
2 surprised there are a couple of them that haven't.

3 The next series of questions I've got to ask you go to
4 the heart of jury service, and that is can you -- and can
5 these folks rely upon you and can I rely upon you to be guided
6 only by the evidence that you hear in trial and not anything
7 that you've read, which may or may not be accurate, anything
8 that you've seen on TV or not, anything that you may or may
9 not know?

10 So let's ask it this way: Is there anybody who had so
11 much information about the allegations that you've heard in
12 this indictment and the subject matter of this case that
13 you've already made an opinion one way or the other? An
14 opinion that these folks are no longer with us, or with us, or
15 that they are bad or good, or that they were nine feet tall or
16 anything else?

17 Any kind of opinion that you've made with regard to
18 these three people? All right. I'm going to ask the opposite
19 question and ask you for a show of hands, and that is, can
20 each of you, by saying yes, by showing your hand, can
21 represent to these parties that you will listen to the
22 evidence in this case and that you hold no solid opinion at
23 all about any of the issues in this case so that you can
24 listen to the evidence and make your judgment only upon the
25 evidence that you hear in the trial? If you can do that,

1 raise your hand.

2 All right. If you cannot, raise your hand. All
3 right. I have one lady in the back. And, I'm sorry, your
4 name again, please, ma'am?

5 THE JUROR: I'm Juror 149, Virginia Garcia.

6 THE COURT: Okay. Ms. Garcia, I'm going to let you
7 step back. Thank you very much.

8 MS. HAJDA: Juror No. 280, Ryan Kozielski, replacing
9 No. 149, Virginia Garcia.

10 THE COURT: You could probably have a better handle
11 pronouncing your name than she.

12 THE JUROR: Kozielski.

13 THE COURT: How about your schedule?

14 THE JUROR: I have jury duty this Thursday.

15 THE COURT: Get you out of that just like that.

16 That's the weakest one I've ever heard. Have a seat. You
17 understand, sir, that an indictment is no evidence of guilt or
18 any wrongdoing?

19 THE JUROR: Right.

20 THE COURT: Are you able at this point to tell these
21 folks -- I'll let you get a seat so you don't fall down.

22 THE JUROR: I do have one thing to say. I do know a
23 U.S. Attorney.

24 THE COURT: All right. Who?

25 THE JUROR: Steven Bass.

1 THE COURT: All right. Where does he -- does he live
2 in Austin?

3 THE JUROR: Yeah, I think so.

4 THE COURT: Okay.

5 THE JUROR: I have a working rapport with him. I work
6 for the Trustee's Office --

7 MR. CARRUTH: He's a civil attorney in our office,
8 your Honor.

9 THE COURT: All right. Mr. Bass is not going to have
10 anything to do with this case. He's a --

11 THE JUROR: All right.

12 THE COURT: -- a civil lawyer. I prefer to say he's a
13 lawyer in civil matters. I've never met many civil lawyers.
14 The fact that he's not going to participate in this case at
15 all, that won't influence you one way or the other, will it?

16 THE JUROR: No, not at all.

17 THE COURT: Have a seat. Now, it is a -- also
18 well-known fact that Madelyn Murray O'Hair was an atheist and
19 publicly said that she was an atheist and was associated with
20 American Atheists, Incorporated that did business as American
21 Atheist Press and United Secularists of America.

22 Now, first, is there anybody on the panel who did
23 business or is a member of either of those organizations? Is
24 there anybody on the panel who has such an idea or opinion
25 about this lady, or the two other, her son and granddaughter,

1 because of her publicly held beliefs, that feel that you just
2 couldn't possibly do what I've already asked you to do and
3 that is, base your judgment solely on the evidence?

4 In other words, the fact that she is or was not, or is
5 or was not an atheist, or is or was not in these
6 organizations, if you'll listen to the evidence and you'll
7 make your mind up only on what you hear in the trial with
8 regard to these specific criminal charges, is there anybody
9 who cannot do that, let me see your hand now, please.

10 One of the most difficult questions I think that I'm
11 required by law to ask people who are going to be on a jury
12 sounds so simple, and that is will each of you represent to me
13 on your oath that you will follow my legal instructions? Now,
14 I've never had 35 people leap up, yell "No," and then, walk
15 out. But it is so important in the trial of our cases that
16 people follow the legal instructions.

17 These parties will rely upon it. Any appellate court
18 will rely upon it. And, of course, I rely upon it. You can
19 get a group of lawyers in a room, the best lawyers you can
20 find, and they will have different views on what the law is or
21 should be in many areas. We all see that on the television
22 and that type of thing all the time.

23 A lot of us are easy to criticize what the law is or
24 should be. But in this case, when you take your oath as a
25 juror in this case, you'll be required to follow the written

1 and oral instructions that I give you. I will give you
2 written instructions in this case. I can't give them to you
3 now because I haven't heard the evidence. I'll be hearing the
4 evidence with you. And then, I will give you written
5 instructions on what the law is.

6 Now, is there anybody, for whatever reason, cannot
7 make the commitment that you will follow the legal
8 instructions as given to you during and at the end of this
9 case? If so, please raise your hand if you cannot make that
10 commitment.

11 Now, is there anybody who thinks that you are familiar
12 with any of the facts in this case? There are several things
13 that I need to ask, and I'm not trying to pry, but in every
14 criminal case, they have to be asked of the jury panel. So I
15 don't give any apologies. One of them is, have you ever been
16 victims of a crime? Any victim of crime from robbery to house
17 break-ins, vandalism on the car, more serious matters? And
18 I'm going to get to that in a minute.

19 The other question is, have you ever been arrested or
20 charged with a crime? And because those are personal
21 questions and I'm asking you not only about you but your
22 spouse, your children, and since I have a bunch of
23 grandchildren, I'll go ahead with grandchildren, too.

24 But I'll answer it first. I've been arrested four
25 times in my life, three times by federal judges for having a

1 sharp mouth. On two of those occasions, I was not guilty.
2 I've been blessed with four sons. I've had that wonderful
3 experience of getting up at 2:00 in the morning and going and
4 getting one out of the jailhouse.

5 And I have had everything in my years as a judge from
6 horrendous crimes to -- I remember one lady, who was 84 years
7 old, raised her hand and she was arrested for climbing under a
8 fence to sit in the wildflowers to protest some nuclear thing
9 that went on. So we've probably heard everything, but if you
10 want and feel more comfortable answering the questions in
11 pseudo privacy, as you see, you could come up.

12 All right. Let's take the front row first. Anybody
13 in your family or immediate family been victims of a crime?
14 And we'll start with -- yes, ma'am, if you'll tell us your
15 name and number.

16 THE JUROR: Susanna Medrano. I think my number's 152.
17 Burglary of a habitation.

18 THE COURT: About how long ago?

19 THE JUROR: About five years ago.

20 THE COURT: All right. Yes, sir.

21 THE JUROR: I'd like to approach the bench.

22 THE COURT: You may. Lawyers may please come up.

23 (At the Bench, on the record.)

24 THE JUROR: My name is Ronny Senkel, Juror No. 44. I
25 have an uncle that was murdered in Austin, Texas.

1 THE COURT: About how long ago?

2 THE JUROR: It's been about three years ago and --

3 THE COURT: Obviously, you have feelings about that
4 one way or the other. Let me just ask you a couple of
5 questions. Did you participate in any way in the trial?

6 THE JUROR: No. It was my mother's brother and she
7 has two other brothers that was able to go and be there during
8 the trial, and so forth, and I don't know all the complete
9 details. I do know that there was some -- one of the people
10 that was being prosecuted was a son to one of the law firms in
11 Houston.

12 THE COURT: That experience, as unpleasant as it had
13 to be, can you represent to these people that you can put that
14 experience in the closet in your house and not be influenced
15 by it, as you sit here, and listen to the evidence in this
16 case?

17 THE JUROR: That's a whole separate deal than this
18 case.

19 THE COURT: All right. Thank you.

20 THE JUROR: One other thing, your Honor. You had a
21 second question. Had anyone ever been convicted. My mother
22 and a sister that has been to the penitentiary.

23 THE COURT: All right. For what reasons?

24 THE JUROR: Drugs.

25 THE COURT: About how long ago?

1 THE JUROR: Probably been about six, seven years ago.

2 THE COURT: I need to ask you the same question.
3 Those experiences, as unpleasant as they have been, can you
4 put those aside?

5 THE JUROR: I believe so.

6 THE COURT: Thank you. All right. Next on the line
7 here. Anybody the victim of a crime? Yes, sir.

8 THE JUROR: Your Honor, I had car broken into a couple
9 of times, or attempted break-ins.

10 THE COURT: Name and number?

11 THE JUROR: Oh, 301, Mr. Sahlen, Robert Sahlen.

12 THE COURT: When you get my age, you're not supposed
13 to remember your name, but you are supposed to remember. When
14 was the last time?

15 THE JUROR: Probably eight or ten years ago. And my
16 wife had some burglaries with her former ex-husband in Dallas.
17 That's been probably ten or twelve years ago, also.

18 THE COURT: Thank you. Yes, sir.

19 THE JUROR: Jeff Sloan, 233. I was robbed at gunpoint
20 approximately 28 years ago.

21 THE COURT: Did you participate in any trial
22 thereafter?

23 THE JUROR: No, they were never caught. I had a car
24 broken into probably about 28 years ago. And my son was
25 arrested for DUI about a year ago. I don't know the results

1 of that. His biological father handled it.

2 THE COURT: All right. Thank you very much, sir.

3 THE JUROR: Can I approach the bench?

4 THE COURT: You may.

5 (At the Bench, on the record.)

6 THE JUROR: Terry 192 -- Terry Olguin. I was taken
7 away from my father for molesting me.

8 THE COURT: As terrible as that has to be, can you
9 represent to me and these parties that you will put that
10 experience aside and not be --

11 THE JUROR: Yes.

12 THE COURT: Okay. Thank you, ma'am. Next?

13 THE JUROR: Kenneth Sisk, 289. My apartment was
14 broken into about eight months ago.

15 THE COURT: All right.

16 THE JUROR: Blake Patterson, 293, burglary of my
17 house.

18 THE COURT: About how long ago?

19 THE JUROR: Oh, probably eight years ago.

20 THE COURT: Okay, sir. Thank you. Anybody else?
21 Yes, ma'am.

22 THE JUROR: Teresa Roy, 318, burglary of a van,
23 robbery about four years ago.

24 THE COURT: All right. Did you end up having to
25 participate in any trial or anything?

1 THE JUROR: No, sir.

2 THE COURT: All right. I have everybody on the front
3 row? We'll start with the second. Yes, sir.

4 THE JUROR: Tom Hurt, No. 239. I had a car stolen
5 about ten years ago.

6 THE COURT: Okay.

7 THE JUROR: Dayton Grumbles, Juror 265. I had a
8 robbery committed against me a couple of times about 25 years
9 ago.

10 THE COURT: All right, sir.

11 THE JUROR: I need to approach.

12 THE COURT: Just come right up.

13 (At the Bench, on the record.)

14 THE JUROR: Gloria Mislinski, it's 182. About ten
15 years ago, when I was in college, I got a DUI.

16 THE COURT: Okay. And that experience, as unpleasant
17 as it is, could you represent to these parties that you will
18 not be influenced by whatever that experience --

19 THE JUROR: Yeah, I just didn't want anybody else to
20 know.

21 THE COURT: Okay. Yes, ma'am.

22 THE JUROR: Can I approach the bench?

23 THE COURT: You bet. Come on up.

24 (At the Bench, on the record.)

25 THE JUROR: I had a DWI.

1 THE COURT: Need your name and number.

2 THE JUROR: Marcos Gonzales, 87, DWI about eight years
3 ago.

4 THE COURT: Okay. Did anything that had to do with
5 this -- can you represent to these people that they will not
6 be influenced by it?

7 THE JUROR: Yeah.

8 THE COURT: Okay. Yes, ma'am.

9 THE JUROR: No. 56, my husband was arrested and
10 indicted for DWI.

11 THE COURT: Okay. About how long ago?

12 THE JUROR: About a year and -- less than -- less than
13 a year and a half.

14 THE COURT: All right. Thank you. Anybody else?
15 Yes.

16 THE JUROR: Donald Scott, No. 338. I had a car broken
17 into about 30 years ago and a lawn mower stolen about five
18 years ago.

19 THE COURT: Did you ever get the lawn mower back?

20 THE JUROR: No, sure didn't.

21 THE COURT: Know the answer about the car. Anybody
22 else on 2? Third row? Yes, sir.

23 THE JUROR: Hector Rodriguez, 205, burglary of an
24 apartment about 22 years ago.

25 THE COURT: Okay. Mr. Rodriguez. Yes, ma'am.

1 THE JUROR: May I approach the bench?

2 THE COURT: Yes, ma'am.

3 (At the Bench, on the record.)

4 THE COURT: I need your name and number.

5 THE JUROR: Cheryl Copeland, Juror No. 64. My friend
6 was arrested for burglary of a habitation and he got deferred
7 adjudication. And my husband has been arrested for DWI and,
8 also, on drug charges, amphetamines. He has been on probation
9 a couple of months now.

10 THE COURT: Those experiences, ma'am, as unpleasant as
11 they have to be, can you represent to me and these parties
12 that you will put those in the closet at home and not be
13 influenced by them if you are to be a juror in this case,
14 judging only from the evidence that you hear?

15 THE JUROR: I would say yes.

16 THE COURT: Okay. Thank you, ma'am. Third row. Yes,
17 ma'am.

18 THE JUROR: I was mugged and had my purse stolen about
19 17 years ago.

20 THE COURT: Okay. Thank you.

21 THE JUROR: May I approach the bench?

22 THE COURT: You may.

23 (At the Bench, on the record.)

24 THE COURT: I need your name and number, please.

25 THE JUROR: Juror 280, Kozielski. I was arrested for

1 DWI and went to trial the following summer and found not
2 guilty.

3 THE COURT: All right. Those experiences, being
4 arrested and being charged, can you put those aside and not be
5 influenced if you're to be a juror in this case?

6 THE JUROR: Yes, sir.

7 THE COURT: Thanks. Anybody else? Yes, sir.

8 THE JUROR: May I approach, your Honor?

9 THE COURT: Yes.

10 (At the Bench, on the record.)

11 THE JUROR: David Laurie, Juror 13.

12 THE COURT: Okay.

13 THE JUROR: My cousin Andrew was killed in a
14 hit-and-run by a school bus about six months ago, and the
15 driver of that bus is still pending, as well I had a PI about
16 two or three years ago.

17 THE COURT: The fact that you've had these
18 experiences, can you represent to these parties that you
19 cannot be influenced by those experiences at all and listen
20 and make your judgment only on the evidence that you hear in
21 trial?

22 THE JUROR: Yes, I can.

23 THE COURT: All right. Anybody else on the third row?
24 Yes, sir.

25 THE JUROR: Gary Leasman, 71. I had a family

1 disturbance about a year ago. Everything was dropped.

2 THE COURT: That experience, can you represent, will
3 not influence you in this case if you are to be a juror? You
4 could judge only on what you hear and see during the trial and
5 that experience will not influence you?

6 THE JUROR: It won't influence me.

7 THE COURT: Thank you, sir. Anybody else on the third
8 row? All right. Have I gotten everybody now whose members of
9 the family have either been victims of crime or charged with a
10 crime?

11 THE JUROR: I'm sorry, I thought you were just
12 asking --

13 THE COURT: I've split. Let's go to the other one.

14 THE JUROR: 289, I was convicted of DWI in 1987 in
15 Cameron County jury trial. And my son has been pretty much a
16 bad actor. He's been in about every jail from here to South
17 Padre Island for various things.

18 THE COURT: One day we're going to have to call him,
19 trade stories. Thank you. Anybody else? Yes.

20 THE JUROR: My name is Dayton Grumbles, Juror 165. I
21 said 265 a while ago. But anyway, I've been arrested for game
22 violation, and my son's been arrested for different things.
23 He's out of jail now anyway.

24 THE COURT: All right. About how long ago was it when
25 you were arrested?

1 THE JUROR: It was about 30 years ago. It was --
2 well, '63, so it would be 37 years ago.

3 THE COURT: Long time ago. I can remember 1963. Yes,
4 ma'am.

5 THE JUROR: I'm Juror 64, Cheryl Copeland. I did
6 mention our business had been broken in twice in the last
7 couple of years.

8 THE COURT: Okay. Thank you. Anybody else need to
9 respond? Yes, sir.

10 THE JUROR: May I approach the bench?

11 (At the Bench, on the record.)

12 THE JUROR: David Braley, Juror 193.

13 THE COURT: Sure.

14 THE JUROR: My father was arrested about 15 years ago,
15 and the trial was held in this courtroom. It completely
16 ruined his life, his career, and I really don't think I could
17 really serve as a juror.

18 THE COURT: All right.

19 THE JUROR: I know we sat in here for --

20 THE COURT: It's immaterial, this courtroom. This is
21 not my courtroom. This case is not going to be tried in this
22 courtroom -- I mean, it will be tried in my courtroom down on
23 1, but the point is --

24 THE JUROR: Just a federal jury.

25 THE COURT: Okay.

1 THE JUROR: I have animosity against the federal for
2 what -- I won't be able to sit on a jury. It's just
3 completely ruined his career, and I'm very contemptuous.

4 THE COURT: Well, that's exactly what you're under
5 oath to be. So let me make sure that I have this down now.
6 The experience that you had with the federal prosecution of
7 your father, you do not believe you'll be able to set it aside
8 and you think it would influence you if you're to be a juror
9 in this case?

10 THE JUROR: Very definitely so, yes.

11 THE COURT: Let me have your name and number, again,
12 please.

13 THE JUROR: David Braley, B-R-A-L-E-Y, No. 193.

14 THE COURT: All right. Mr. Braley, thank you, sir.

15 THE JUROR: Thank you. Sit down?

16 THE COURT: Yes. You may take your seat out here.

17 THE JUROR: I forgot something. My car was broken
18 into, my ATM stolen and money taken out of my bank.

19 THE COURT: Okay. Yes, sir.

20 THE JUROR: Yes, sir, my name's David Boxley, and my
21 oldest son was arrested for possession of drugs.

22 THE COURT: About how long ago, approximately?

23 THE JUROR: About five years ago.

24 THE COURT: Anybody else? No wildflowers at a nuclear
25 plant? All right. For those of you who have been up here,

1 I've asked you a couple of questions. Those of you who have
2 not been up here, I need to ask you a couple of questions.
3 The record will reflect your answers.

4 Is there anybody on the panel who cannot represent to
5 the parties in this lawsuit, the government, and Mr. Karr, and
6 to me that those experiences, while certainly not pleasant and
7 sometimes very bad, that you can put those experiences aside
8 and judge this case only on the evidence that you hear in
9 trial? If you cannot do that, let me see your hand now.

10 All right. Thank you. If you'll call one for Mr.
11 Braley. I'm excusing Mr. Braley.

12 MS. HAJDA: Juror No. 128, Jane Bronikowski, replacing
13 No. 193, David Braley.

14 THE COURT: Just goes to show you, no one's safe. Ms.
15 Bronikowski, let me ask you a couple of questions. Just come
16 up here. First off, how about the schedule?

17 THE JUROR: I do have a doctor's appointment in June.
18 I cannot verify the date, but I know it may be the first week.

19 THE COURT: Okay. Other than -- what type of -- I
20 don't mean to be pushy.

21 THE JUROR: Dental appointment.

22 THE COURT: We'll get you out for that. You have been
23 hearing my questions.

24 THE JUROR: Yes.

25 THE COURT: You understand the indictment is no

1 evidence of guilt.

2 THE JUROR: Yes, sir.

3 THE COURT: The fact that we are dealing with the
4 O'Hairs or the Murrays, will that influence you or can you
5 represent to these parties that you will make up your mind
6 solely on what you hear in trial?

7 THE JUROR: Well, I mean, I could be fair.

8 THE COURT: In what sense, ma'am?

9 THE JUROR: Religion.

10 THE COURT: Well, you're going to have to explain that
11 to me.

12 THE JUROR: Didn't it involve in being a Christian?

13 THE COURT: All right. Well, I'll let you go back.
14 You could go back, but don't talk to anybody.

15 THE JUROR: Okay.

16 THE COURT: All right.

17 THE JUROR: Thank you.

18 MS. HAJDA: Juror No. 8, Susan Williams, replacing No.
19 128, Jane Bronikowski.

20 THE COURT: Ms. Williams how about your schedule?

21 THE JUROR: I have some old stuff, old skeletons. I
22 was arrested as a teenager for shoplifting.

23 THE COURT: Well, I will forgive you. Let me ask you
24 a few questions.

25 THE JUROR: My husband's son had alcohol and drug

1 stuff, like, 20 years ago.

2 THE COURT: The question I asked about the Madalyn
3 Murray O'Hair --

4 THE JUROR: I've lived in Austin all my life. I know
5 of her. I think I saw her one time at Coa-coa's, but I've
6 never met her.

7 THE COURT: Would you be able to listen to the
8 evidence and make your mind up only on the evidence that you
9 hear?

10 THE JUROR: Yes.

11 THE COURT: Okay.

12 MR. CARRUTH: Your Honor, I did not hear. I don't
13 think Mr. Mills heard that.

14 THE COURT: When she was a teenager, she was arrested
15 for shoplifting. In that case, I forgave her.

16 THE JUROR: When I was a teenager. I was never
17 informed with the formal Miranda sufficient to -- I don't know
18 if I was charged or not.

19 THE COURT: Let me ask you this: Do you understand
20 that the defendant is presumed to be innocent?

21 THE JUROR: Yes.

22 THE COURT: You can make that presumption?

23 THE JUROR: Yes, of course.

24 THE COURT: You could have a seat. Anybody on the
25 panel ever had the really refreshing and rewarding experience

1 of going to law school? Yes, sir. See, there are some people
2 that have had that experience. Mr. Rodriguez, if you'll tell
3 us your name.

4 THE JUROR: Hector Rodriguez, Juror 205. I graduated
5 from that fine law school down the hall in 1987.

6 THE COURT: Do you practice law?

7 THE JUROR: I do.

8 THE COURT: And what capacity?

9 THE JUROR: Primarily in the insurance field. I'm an
10 insurance lawyer and consultant.

11 THE COURT: Thank you. The only question I have to
12 ask you is notwithstanding the fact that you may think I'm
13 wrong, will you follow my legal instructions?

14 THE JUROR: Yes, sir.

15 THE COURT: Thank you. Anybody else either went to
16 law school or works for a legal entity of any nature from a
17 sheriff to a law firm to the Attorney General of the United
18 States, Supreme Court of the United States, anything like
19 that? Yes, sir.

20 THE JUROR: Juror No. 280, Ryan Kozielski. I work as
21 a trustee to the Federal Bankruptcy Court. He's privately
22 contracted out, but --

23 THE COURT: He's appointed by the bankruptcy?

24 THE JUROR: That is correct.

25 THE COURT: I like to think they work for me, but I

1 don't know. I get to the point I just hope they don't make
2 mistakes and I'm fooled. Thanks. Anybody else work for any
3 legal entity? Yes, ma'am.

4 THE JUROR: Susanna Medrano, Juror No. 152. I work
5 for eight criminal defense attorneys. I'm a runner.

6 THE COURT: Are you fast?

7 THE JUROR: Very fast.

8 THE COURT: Tell us the --

9 THE JUROR: The names? David Fannin, David Reynolds,
10 Ira Davis, Ian Inglis, Erik Goodman, Ken Anschutz.

11 THE COURT: I got an invitation. Mr. Fannin is
12 getting married.

13 THE JUROR: Right. He already got married last night.

14 THE COURT: The fact you know lawyers, would that
15 influence you in this case?

16 THE JUROR: Huh-uh.

17 THE COURT: Anybody else? How many of you -- I love
18 this one, so I'll answer it, too. The question is how many of
19 you have ever had a run-in, a real dispute with the federal
20 government? I had a gentleman once stood up and said he had
21 been audited eight years in a row. It turned out he worked
22 for the IRS.

23 How many have ever had a dispute with the federal
24 government where it's the Internal Revenue Service,
25 Immigration, Justice Department, EEOC, any of that stuff?

1 Anybody have any personal disputes with the government? Yes,
2 sir.

3 THE JUROR: Routine audit.

4 THE COURT: Just an audit. About how long ago?

5 THE JUROR: About nine years ago.

6 THE COURT: Can you forget it?

7 THE JUROR: Yes, sir.

8 THE COURT: Okay.

9 THE JUROR: Routine audit.

10 THE COURT: Can you forget it?

11 THE JUROR: Sure.

12 THE COURT: About how long ago?

13 THE JUROR: I think about five years ago.

14 THE JUROR: Same thing.

15 THE COURT: Okay. Would it influence you in any way?

16 THE COURT SECURITY OFFICER: Your Honor, he needs his
17 name and number.

18 THE JUROR: Robert Sahlen, 301.

19 THE JUROR: Dayton Grumbles, 165.

20 THE COURT: And I had one other. I --

21 THE JUROR: Scott Donald, 338.

22 THE COURT: All right. Now, I'd like for you to look
23 around just at each other. Is there anybody on this panel
24 that knew one another before you came here today? Okay. That
25 occurs rarely --

1 THE JUROR: Someone looks familiar to me.

2 THE COURT: I don't think it's going to influence you
3 one way or the other, but at least y'all might have seen each
4 other before. Now, I'm really curious. Does anybody work for
5 one another, or that type of thing, have any influence over
6 you?

7 All right. I'll have the lawyers up here.

8 (At the Bench, on the record.)

9 THE COURT: Do you have any further questions?

10 MR. CARRUTH: No, your Honor. We're satisfied.

11 MR. T. MILLS: No, your Honor.

12 THE COURT: Okay. Have a seat. All right. Members
13 of the jury panel, check and make sure you know which chair
14 you're in. I'm going to give you a 30-minute break. So that
15 will take us back here at 12:20, if my eyes are correct.
16 12:20. When you go out, for those of you who smoke, it's just
17 like high school, you've got to go in high school in the front
18 yard, but the security people will probably run over you
19 getting out there.

20 Those of you talk about anything but this case. Don't
21 talk about this case so that when you come back, you can
22 answer the questions about not talking to anybody about this
23 case. You could talk about anything else. Take a 30-minute
24 break. For everybody's benefit, I anticipate being through at
25 about 12:30, 12:35 so that you can kind of know what you're

1 going to do.

2 Those of you, back over here, that haven't been called
3 today or have been called and excused, you may sit anywhere
4 when you come back, but come back. I'm short of Marshals. By
5 the time they run you down, arrest you, put you in jail and
6 come back, I won't have any Marshals. So please come back,
7 sit anywhere, but I do need y'all to be seated at the same
8 chair. We're in recess till 12:20.

9 (Recess.)

10 THE COURT: All right. Let's let the record start.
11 And if the government would read into the record their
12 peremptory challenges, please.

13 MR. CARRUTH: Susanna Medrano, No. 152, Robert Sahlen,
14 No. 301, Kenny Sisk, No. 289, Kenneth Ittigson, No. 89, Teresa
15 Roy, No. 318, Marcos Gonzales, No. 87, and the alternate
16 strike is David Laurie, No. 13.

17 THE COURT: All right. Any objections, exceptions or
18 Batson challenges to any of the peremptories of the
19 government?

20 MR. T. MILLS: No, sir.

21 THE COURT: All right. If the defendant will read
22 their peremptories into the record, please.

23 MR. T. MILLS: I just have their last names here,
24 Juror Senkel, S-E-N-K-E-L --

25 MS. WILLIAMS: -- that's Juror No. 44.

1 MR. T. MILLS: Walker, Merry Walker.
2 MS. WILLIAMS: Juror 250.
3 MR. T. MILLS: Brown, Juror --
4 MS. WILLIAMS: Juror 288.
5 THE COURT: Y'all don't want Mr. Brown? You want him
6 to go around the country for Governor Bush?
7 MR. T. MILLS: Be fine. Martinez-Anders.
8 MS. WILLIAMS: Juror 41.
9 MR. T. MILLS: Donovan.
10 MS. WILLIAMS: 245.
11 MR. T. MILLS: Grumbles.
12 MS. WILLIAMS: 165.
13 MR. T. MILLS: Klein.
14 MS. WILLIAMS: 6.
15 MR. T. MILLS: Rhode.
16 MS. WILLIAMS: 344.
17 MR. T. MILLS: Powley.
18 MS. WILLIAMS: 191.
19 MS. WILLIAMS: Kozielski, 280.
20 MR. T. MILLS: The alternates are Ruud --
21 MS. WILLIAMS: 294.
22 MR. T. MILLS: Gainer.
23 MS. WILLIAMS: 355.
24 THE COURT: Any objections, exceptions or Batson?
25 MR. CARRUTH: No, your Honor.

1 THE COURT: Ms. Sims, if you'll read the jury
2 selected, please.

3 THE CLERK: Juror No. 341, Jeffrey Babcock, Juror No.
4 233, Jeffrey Sloan, Juror No. 192, Terry Olguin, Juror No.
5 293, Blake Patterson, Juror No. 239, Tom Hurt, Juror No. 190,
6 Lewis Goodley, Juror No. 182, Gloria Mislinski, Juror No. 56,
7 Avelina Castilleja, Juror No. 338, Donald Scott, Juror No.
8 157, Christopher Bittick, Juror No. 205, Hector Rodriguez,
9 Juror No. 64, Cheryl Copeland, Juror No. 99, Rosie Amaro,
10 Juror No. 71, Gary Leasman, and Juror No. 8, Susan Williams.
11 The last three are alternates.

12 THE COURT: For a total of?

13 THE CLERK: Fifteen.

14 THE COURT: The government only used one peremptory.

15 THE CLERK: They have one for them.

16 THE COURT: So there's one?

17 THE CLERK: Yeah.

18 MS. WILLIAMS: I'm sorry. What happened to Juror No.
19 -- okay. I see.

20 THE COURT: Is the jury acceptable to the prosecution?

21 MR. CARRUTH: It is, your Honor.

22 THE COURT: And to the defense?

23 MR. T. MILLS: Yes, sir.

24 THE COURT: Let's go off the record.

25 (Off the record.)

1 THE COURT: I'm going to go select the jury. I'm
2 going to put them in Mr. Mace's care and bring them back at
3 ten of 3:00. Is that all right? Opening statements at 3:00.
4 Okay.

5 MR. CARRUTH: There was one thing that happened. We
6 didn't bring it up, but maybe we should bring it up.
7 Ordinarily, when we're selecting the jury, the government and
8 sometimes the defense are asked to read a list of their
9 witnesses to see if either prospective venire persons know
10 them. That was not done in this case. It's my fault for not
11 calling it to the Court's attention.

12 THE COURT: Well, over 100-something witnesses.

13 MR. CARRUTH: There are -- and many of them are from
14 out of state and they may not know, but we need to get
15 something on the record from the defense.

16 THE COURT: I asked each of you if either one of you
17 had any additional questions, and I assumed that -- I kind of
18 tentatively made that decision and outside y'all. If you
19 wanted to read them, we could read them, but I agree with both
20 of you that there's not much good about that.

21 All right. We'll select the jury and recess till ten
22 till 3:00.

23 (Jury panel present.)

24 THE COURT: Ladies and gentlemen, I'm going to have
25 Mrs. Sims, the Clerk, read the names of those selected as

1 jurors. If your name is selected, simply stand where you are.

2 THE CLERK: Juror No. 341, Jeffrey Babcock, Juror No.
3 233, Jeffrey Sloan, Juror No. 192, Terry Olguin, Juror No.
4 293, Blake Patterson, Juror No. 239, Tom Hurt, Juror No. 190,
5 Luis Goodley, Juror No. 182, Gloria Mislinski, Juror No. 56,
6 Avelina Castilleja, Juror No. 338, Donald Scott, Juror No.
7 157, Christopher Bittick, Juror No. 205, Hector Rodriguez,
8 Juror No. 64, Cheryl Copeland, Juror No. 99, Rosie Amaro,
9 Juror No. 71, Gary Leasman, and Juror No. 8, Susan Williams.

10 THE COURT: Ladies and gentlemen, you have been
11 selected to be the jurors in this case. I'm going to put you
12 in the custody of Mr. Mace, who's going to show you where to
13 go. We have special doors and everything for jurors. We'll
14 be trying this case downstairs in the courtroom, on the first
15 floor, but Mr. Mace will show you the jury room and where to
16 go and come.

17 I'd like for you to be ready at about a quarter to
18 3:00. I'm going to release you till a quarter to 3:00 with
19 only one instruction, and that is go see anything you want.
20 The Capitol is gorgeous. It's been redone. Perhaps some days
21 they do that, I think, but do not talk about this case.

22 I'll be asking you three questions at the beginning of
23 any session of court: Have you talked to anybody about this
24 case? Have you permitted anybody to talk to you about the
25 case? Have you learned anything about the case outside the

1 presence of each other and this courtroom? I need for you to
2 be able to say under your oaths "No" to those questions.

3 So if you're going to go eat lunch together, that's
4 fine, just don't talk about this case. Quarter of 3:00. Mr.
5 Mace will show you where to go. All right. Just follow him.

6 THE JUROR: Your Honor, can we tell people we've been
7 selected?

8 THE COURT: You may. Get all they can about you, but
9 just don't talk about the case.

10 All right. Members of the jury panel, I'm going to
11 thank you for your patience in this case. Where else can you
12 come and see democracy in action? A lawyer is selected as a
13 juror and a gentleman by the name of Hurt on crutches. Life
14 has its funny quirks. Now, for those of you sitting there in
15 great disappointment, Judge Austin is going to be available at
16 1:30. He's going to cool his heels till 2:00.

17 I'm going to give y'all till 2:00 to eat lunch. Those
18 of you -- I think his case is going to be a very interesting
19 case. It involves some very interesting things. It's going
20 to go to trial next week, so I'm going to leave you in charge
21 with Melissa, who's already screwed up already once today, so
22 she'll be perfect the rest of the day to get from your number
23 approximately 40 people to come back.

24 The rest of you are going to be released. But I do
25 want to impress upon you the importance of what we've done

1 today. Many of you, I think, are probably relieved. Many
2 people who have been selected on that jury feel that they have
3 had a hardship put on them. But if you'll look around, you'll
4 see your own investment. This jury panel cost the taxpayers
5 -- Melissa, how many do we have?

6 MS. HAJDA: 202.

7 THE COURT: I don't even want to tell you how much it
8 cost, but it's important. And when you get the urge not to
9 come, I want you to remember that you could have been on this
10 jury, you might be on another jury. Call Melissa, follow the
11 instructions. We didn't want any more jurors than we have
12 need of. And you don't want to be down here when it's not
13 going to be beneficial to the administration of justice.

14 This is a new panel. Y'all are going to be here for a
15 couple of months. I hope we get to see you again. We have
16 four judges who try cases. We're able to try cases in the
17 Austin Division within ten months of their filing because
18 jurors come from our 16 counties that do service. We try to
19 be as efficient as we can. We try to be as polite as we can.

20 But it's tough business. And it is -- both in
21 criminal and civil cases to come down here and serve on a jury
22 is a privilege for living in this country. It's not a cost,
23 it's a privilege, and I appreciate your being here. We're in
24 recess until 2:45.

25 (Recess.)

1 THE COURT: All right, counsel. Before I bring in the
2 jury, does anyone wish to invoke the Rule?

3 MR. T. MILLS: The defense does, your Honor.

4 THE COURT: Government will name their representative,
5 please.

6 MR. CARRUTH: Your Honor, we have two case agents,
7 Donna Cowling from the FBI, and Ed Martin from the Internal
8 Revenue Service.

9 THE COURT: Both are going to testify?

10 MR. CARRUTH: They're going to be summary witnesses
11 toward the end, your Honor. They both work with different
12 sets of witnesses in this case. We would like for them to be
13 exempt from the Rule.

14 THE COURT: Any objection to the two representatives?

15 MR. T. MILLS: Well, I may need favors from Mr.
16 Carruth sometime along the line.

17 THE COURT: I'm not interested in y'all's favors. Do
18 you have any objections?

19 MR. T. MILLS: No, sir.

20 THE COURT: All right. Counsel, I'm not going to
21 limit y'all on opening statement. You both asked for an hour,
22 you could have whatever you wish. Anybody nods off, they go
23 to sleep, it's time to hush. All right. Anything else before
24 we bring in the jury?

25 MR. CARRUTH: No, your Honor.

1 MR. T. MILLS: Later, during the day or trial, we're
2 going to have our investigator named Al Teel that we would
3 like exempt from the Rule, also.

4 MR. CARRUTH: No objection.

5 THE COURT: All right. Other than that, I don't know
6 who's going to be a witness, so I'll rely on counsel. If
7 anybody comes in unobtrusively, slip off and tell them to go
8 out, and then, also, be sure and get the witnesses the
9 instructions that they're not to talk to one another about
10 their testimony. My instruction is that they can talk to the
11 lawyers if they wish, but it's America, they can decide who
12 they want to talk to.

13 Bring the jury in.

14 (Jury present.)

15 THE COURT: Members of the jury, the last thing I told
16 you, I guess, this afternoon, was that on the opening of every
17 court session in the morning and in the afternoon hour, I'll
18 be asking you three questions. Those are very simple
19 questions. They are: Have you talked to anybody about this
20 case? Have you permitted anybody to talk to you about the
21 case? And have you learned anything at all about the case
22 outside the presence of one another and this courtroom?

23 You'll be answering under oath, of course, and it's
24 very important to be able to say "No" to those questions
25 because they guarantee a fair trial. That is one of our

1 constitutional guarantees that you will not talk to anybody.
2 When you go home, your family's going to drive you crazy
3 because they're going to know you're on this case and they're
4 going to want to talk to you about the case, but you're just
5 going to have to tell them the truth, that you heard down at
6 the courthouse that Sparks is either half or mostly crazy and
7 you just better follow his instructions because you don't know
8 or nobody else knows what he's going to do.

9 You'll have plenty of time later on to talk with your
10 family members, but the reason for that is that somebody might
11 say something that might influence you and nobody else has
12 heard it, and I want you to decide this case on what you hear
13 in the courtroom.

14 You will get very good at answering those questions.
15 You'll almost sound like a choir because you have to sound --
16 you have to make oral answers. So let's start off. Remember
17 you're under oath. Have you talked to anybody about this
18 case?

19 THE JURORS: No.

20 THE COURT: Has anybody talked to you about this case?

21 THE JURORS: No.

22 THE COURT: And have you learned anything at all about
23 the case outside the presence of one another and this
24 courtroom?

25 THE JURORS: No.

1 THE COURT: All right. Let the court record reflect
2 negative responses to all questions by all jurors. Now, if
3 you'll stand, please, raise your right hand, you're going to
4 be sworn to be the jury in this case.

5 THE CLERK: Do you and each of you solemnly swear or
6 affirm that in the trial of the case of the United States of
7 America vs. Gary Paul Karr that you will a true verdict render
8 according to the law and the evidence?

9 (Affirmative responses given.)

10 THE COURT: All right. You may be seated. Now, with
11 the taking of that oath, you become judges in this case. And
12 you are the judge of the facts. Under our law, the judge --
13 that is my role -- is to decide, one, what evidence that you
14 should consider in rendering a verdict, what evidence that you
15 should not consider in rendering a verdict, and at the end of
16 the case, to give you written instructions which I am required
17 to read to you orally, but I also give them to you in writing
18 that will guide you in your deliberations.

19 Your judgment and your responsibility is to determine
20 the facts. In a criminal case, it is whether or not the
21 defendant is guilty. The government is required to convince
22 each person on the jury of guilt from the evidence beyond any
23 reasonable doubt. And I'll give you instructions on that.
24 But that doesn't take a rocket scientist to know what
25 reasonable doubt is.

1 I will give you full instructions during the trial.
2 I'll give you instructions at the end of the trial, but the
3 government has the burden of proof of presenting the evidence,
4 and Mr. Karr is entitled, as you've already sworn to uphold,
5 he's entitled to a presumption of innocence and that innocence
6 does not go away throughout the trial. It does not go away
7 while you deliberate.

8 And only if all twelve jurors who will ultimately end
9 up of your number 15 deliberating this case, each individually
10 and all collectively in a unanimous decision, find beyond any
11 reasonable doubt from the evidence that Mr. Karr is guilty can
12 he be found guilty under our system of justice.

13 No matter what I say during the trial, it's going to
14 be a long trial. No matter how I look. Right now, I have the
15 flu. You might think that I'm this sour all the time, but I
16 went and got a shot during the noon hour, and I'm doing a
17 little bit better, says the doctor. Of course, he don't feel
18 like I do.

19 The truth of the matter is I do a lot of things up
20 here. So don't look at me and see if what I think or what do
21 you think I think. That is your job with regard to the
22 evidence. That is your responsibility, it is not mine.

23 Now, what is the evidence? The evidence is the sworn
24 answers by witnesses to questions, not the lawyers' questions,
25 not the lawyers' statements, but the sworn answers. What the

1 lawyers are going to say in a minute in opening statement is
2 very important. They know what the evidence is going to be in
3 this case. And they're going to tell you what they believe
4 the evidence is going to be and the significance of that
5 evidence so that you can look out for it.

6 But what they say is not evidence. You're not to base
7 your verdict in any way, shape or form on what the lawyer
8 says. You must and should consider what the lawyers say in
9 your construction and interpretation of the evidence. But
10 when it comes down to the end of the case, it is what you
11 think the evidence was and it is what you think the evidence
12 means that's determinative in your judgment.

13 Now, evidence can be testimony. It can be documents.
14 It can be stipulations. A stipulation is simply an agreement
15 rather than bringing somebody in with a calendar. The lawyers
16 could agree that I could instruct you that it's Monday.
17 There's no dispute about the fact that it's Monday. And that
18 will be evidence that you can count on in a stipulation.

19 In this case, just like all other case, there's going
20 to be objections during the trial of the case. When a lawyer
21 gets up to object, don't think that lawyer is trying to hide
22 something. The lawyer is trying to bring to my attention that
23 he or she feels that that evidence is something that you
24 should or should not consider.

25 They have an obligation both to their client and to

1 me, as the judge of this case, to bring those to my attention.
2 If I sustain the objection, you won't hear it. If I overrule
3 the objection, you will hear the evidence. But even if I
4 overrule the objection, don't think that evidence is any more
5 important than anything else.

6 Don't try to figure out this case in the beginning.
7 Keep an open mind. Wait until you've heard all of the
8 evidence, and then, you can deliberate and decide what you
9 believe the factual outcome ought to be in this particular
10 case.

11 Now, because this case is going to last more than two
12 weeks, I'm advised -- I've had Mr. Mace give each of you a
13 notebook -- I'm going to allow notes to be taken in this case.
14 I rarely let notes to be taken in the case, but because of the
15 number of witnesses and the number of issues that might be
16 present, I'm going to let you take notes.

17 Now, each day, write your name on the -- on your pad
18 and each day, when you leave, give it to Mr. Mace, and he'll
19 make sure that your notebook is ready for you the next day.
20 We don't take the notebooks home. And at the end of the case,
21 or during the case, don't compare your notebook to anybody
22 else. That's just your information to remind you of certain
23 things. When you consider the evidence, what you remember is
24 going to be a lot more important than what you've put in that
25 book, but you have the right to do that.

1 And at the end of the trial, we collect those
2 notebooks. It becomes what we call part of the record. So
3 don't write any ugly things down about me. Just write what
4 you think should be in on the case.

5 You're going to get lots of breaks. You're going to
6 get noon breaks. You're going to get at least one and two
7 breaks every afternoon. It's going to be tempting for you to
8 come in and talk about what you've seen. But the law is that
9 you should not. The law is talk about anything that you wish,
10 but save your comments until you've heard all of the evidence
11 when you talk about the case.

12 The reason for that is, of course, obvious. Now, I
13 anticipate because half the people out here in this courtroom
14 are attached to the media. I anticipate there's going to be
15 news stories. There's going to be television stories
16 throughout the duration of this trial. If you're at home and
17 one of them comes on the television, just get up and go get
18 another glass of coffee, or tea, or water. Don't listen to it
19 so that you can answer those questions "No" when I ask them to
20 you at the beginning.

21 Save the papers, if you wish, but don't read any of
22 the articles. I don't mean ill will to anybody, but I've been
23 trying cases a long time, and it's sometimes not unusual for
24 me to read about a case and think, well, that's an unusual
25 case, I wonder what it's about, and find out it's the case

1 that I'm trying.

2 So things may not happen in the courtroom that you
3 don't need to know about. Do not listen to any of the media
4 or do not read any of the articles on the case. In just a
5 minute, I'm going to let the lawyers make what they call an
6 opening statement. As I've said, it's very important because
7 they're going to tell you generally a little picture or a menu
8 of what the trial is going to be.

9 When they are through with that, then the government
10 will start to present their witnesses, but I'm going to wait,
11 and we're going to start that in the morning because both
12 sides have indicated they believe the opening statements will
13 be around an hour, and so it will be a little late to start
14 the witnesses.

15 And then, we'll start with the first witness tomorrow.
16 The prosecutor will put the witness on and ask the questions
17 of the witness. Then, the defense will have the right to ask
18 questions, and then, the prosecutor will have the right to ask
19 questions until we've gone through all of the prosecution's
20 witnesses.

21 At that point in time, the defendant, if they -- if he
22 wishes, may present evidence, but he makes that decision later
23 on or, actually, his lawyers will probably make that decision
24 later on, depending upon a lot of factors, many of which you
25 and I will be aware of in the courtroom, and many of which you

1 and I will not be aware of that goes on outside of the case.

2 The Rule has been invoked in this case, which means
3 that the witnesses will not hear each other's testimony and
4 are not allowed to discuss with each other their testimony.
5 So you won't be seeing any witnesses in the courtroom.
6 Generally, that's how we will proceed on the case. It is my
7 usual hour from 8:30 in the morning to 6:00. 8:30 -- now, how
8 many people -- anybody live over 50 miles away? Yes, ma'am,
9 where are you living?

10 THE JUROR: I live in Brady.

11 THE COURT: So you're from Brady, you're a good ways
12 away. You're going to have to make a decision if you're going
13 to stay here or not, and as soon as I know, I will know how to
14 do that. If it's convenient, we try to start at 8:30. And
15 nobody can get out of downtown Austin at 5:00. I have found
16 that if we stay till almost 6:00, you get home about the same
17 time, and we get a little extra testimony in a long trial.
18 That's what we're going to try to be doing.

19 So those are my opening statements. If you have any
20 questions at any time, Mr. Mace is in charge of your security,
21 and he's in charge of your attendance. Get his number and
22 pass on any questions that you might have to me.

23 Mr. Carruth, you have the lectern.

24 GOVERNMENT'S OPENING STATEMENTS

25 MR. CARRUTH: Thank you, your Honor. May it please

1 the Court.

2 Counsel for Mr. Karr, members of the jury, during the
3 next several days or perhaps the next few weeks, you're going
4 to hear testimony regarding three individuals who were
5 long-time residents of Austin, Texas. At the time of their
6 mysterious disappearance in 1995, Madalyn Murray O'Hair, her
7 son, Jon Garth Murray, and her granddaughter and legally
8 adopted daughter, Robin Murray O'Hair, were very actively
9 involved in the American atheist movement, which was at that
10 time headquartered here out on Cameron Road, in the north part
11 of Austin.

12 And you're going to hear evidence that the Atheist
13 Organization was very heavily involved in commercial
14 interstate activities. By that I mean to say they did
15 business not only here in Austin, Texas but in nearly all the
16 other states of this country and in some foreign countries.

17 They raised much of their money. They were tax exempt
18 corporations under the Internal Revenue Code or non-profit
19 corporations, rather than tax exempt, and they raised funds
20 from donations and people who would die and leave their wills
21 or leave money and their estate to them, and they would invest
22 these funds in trusts.

23 And they also promoted their organizational activities
24 and beliefs through broadcast on public television stations,
25 including the local station here in Austin, and others in over

1 100 television stations. I think it was 140 some-odd
2 throughout the United States. The O'Hairs traveled
3 extensively, gave lectures, attended at least two conventions
4 a year of the Atheist Organization, which was comprised of
5 different chapters in different areas of the country, in fact,
6 different countries in the world.

7 Very much so involved in interstate and foreign
8 commerce. And at the time of their disappearance, Madalyn
9 O'Hair was about 76 years old. She had some health
10 conditions. She suffered from diabetes and a heart condition,
11 which required her to take regular medication. She was -- her
12 ambulatory movement were restricted because of surgeries she
13 had in her life, and she had to move about either using a
14 walker or a cane and, in some cases, a wheelchair.

15 Her son, Jon Garth Murray, who was about 40 years of
16 age at the time of the disappearance, was sort of a momma's
17 boy, lived with his mother, never been married, and he was
18 pretty much dependent upon Madalyn. Even though he
19 technically held the title of president of the Atheist
20 Organizations at that time, after Madalyn had been the founder
21 and she got on into her senior years, her son took over as the
22 CEO, so to speak.

23 Robin O'Hair, some say, was the younger version of
24 Madalyn. She was about 30 years old at the time of their
25 disappearance, and she had been born to the union of Madalyn's

1 oldest son, William Murray, who I think you may hear from in
2 this trial, and who left the atheist movement many years ago
3 and became a Christian evangelist.

4 And he and his then wife had a son, Robin O'Hair, and
5 once the marriage terminated, Robin was officially adopted by
6 her grandmother, Madalyn O'Hair, and continued to live with
7 her throughout her lifetime. And you're going to hear
8 evidence that the O'Hairs were a very close-knit family. They
9 all lived together in a residence over on Greystone here in
10 West Austin.

11 They worked together. They ate together. They
12 vacationed together. Everywhere they went together. They
13 traveled together. They came, drove to work and back home
14 together. They were almost co-dependent upon one another.
15 And during those times, you're going to hear testimony from
16 their former employees and coworkers at the American Atheist
17 General Headquarters, who will tell you that the O'Hairs loved
18 their dogs.

19 They had three pet dogs that they kept at their home,
20 and on many occasions they brought those dogs to work with
21 them. If the dogs needed any type of treatment, they called
22 the vet. And whenever they were scheduled to go out of town,
23 they always were meticulous about getting a vet or someone to
24 board their dogs for them because they loved those dogs
25 dearly.

1 They also loved their fine automobiles. Robin had a
2 Porsche automobile that she drove. Jon had a Mercedes Benz.
3 And Madalyn had earlier owned another -- a Mercedes, but
4 because of her advancing age and health problems, she had just
5 about quit driving by the time of her disappearance in '95.

6 And one day, in about August 28th of 1995, the
7 employees of the American Atheist General Headquarters, out on
8 Cameron Road, showed up to find a note on the front door of
9 the business that said the Murray O'Hairs have been called out
10 of town suddenly on an emergency and they expected to return
11 about the middle of the month, about the 15th of September,
12 1995.

13 Now, this seems strange to some folks, but they knew
14 that the O'Hairs were also kind of idiosyncratic people, and
15 they often left the country and traveled together even outside
16 the United States; they had vacations together. And so
17 everybody thought, well, they'll be back, and they didn't
18 worry about them too much.

19 And then, September 15th came and went, and they still
20 didn't return. And then, one of their employees, who you'll
21 hear from, Orin Spike Tyson, he received a letter from Jon
22 Murray. And in this letter, it contained a list of the dozen
23 or more instructions on what they should do to continue the
24 operation of the Atheist Organization and how to meet the
25 payroll, and so forth and so on, paying the bills and making

1 sure that the television programs were distributed, and so
2 forth.

3 And it was business as usual. And there was a cell
4 phone number. Jon Murray used to carry his own cellular
5 telephone. And frequently during the month of September that
6 year, 1995, several of the Atheist Organization had telephone
7 conversations with Jon Murray O'Hair and the other O'Hairs
8 over that cellular telephone, but they were very secretive
9 about what they were doing and where they were.

10 And all of a sudden, at the end of that month, about
11 the 29th of September, the telephone calls stopped, and any
12 attempts to call on the cellular phone went unanswered, and
13 that turned out to be the same day that another unusual event
14 occurred as it was reconstructed by investigators.

15 On that same day, Jon Murray accepted delivery of
16 \$500,000 in gold coins at the Frost National Bank in Northwest
17 San Antonio, from a gold coin or precious metal dealer named
18 Corey Ticknor, who I anticipate you may hear from in this
19 case. And Mr. Ticknor had apparently been contacted earlier
20 by Mr. Murray, and they made arrangements to purchase,
21 actually, \$600,000 in gold coins. But because the gold was
22 being shipped in lots, it did not all arrive at the same time.

23 And after the other \$100,000 came in the following
24 Monday morning, Mr. Ticknor's going to tell you that he tried
25 to call Jon Murray's cell phone number time and again without

1 success. And the other \$100,000 in gold remained unclaimed
2 for a period of time until it was later returned to the
3 Atheist Organization.

4 Well, what brought the federal government into this
5 case because after they disappeared, the atheist folks really
6 got concerned when the Murray O'Hairs failed to show up for a
7 visit of Pope John Paul in New York. They were going to
8 picket or protest the Pope. And they had already made these
9 travel arrangements before leaving unexpectedly. They had
10 purchased reserved airline tickets and made hotel reservations
11 to go to New York, they and several of the members of their
12 Atheist Organization.

13 They were very excited about this. It was to be a big
14 event in the atheist group's activities. And so the atheist
15 members, the board members and coworkers and employees became
16 quite concerned when the O'Hairs failed to appear for that
17 event and that occasion because that was something they were
18 looking forward to.

19 And the atheists themselves then initiated some sort
20 of an investigation and called various chapters that they have
21 in different parts of the country and around the world and
22 tried to locate unsuccessfully the O'Hairs. And, again,
23 nobody was sure where they had gone or why they had left.

24 And then, when it came time to report to the Internal
25 Revenue Service about what their assets and liabilities,

1 income, and so forth, had been for that tax year, the IRS
2 received a form indicating that the Atheist Organization was
3 showing the loss of about \$660,000, or approximately, and that
4 these funds were unaccounted for, and that they were last
5 known to be in the possession of Jon Garth Murray, who was the
6 president of the organization at that time.

7 Now, after the O'Hairs disappeared and failed to
8 return by the end of the year, the Atheist Board of Directors
9 got together in about December of '95 and elected new officers
10 to replace the O'Hairs. And they elected Ellen Johnston --
11 Johnson who resided in Boonton, New Jersey, and she will be
12 the first witness, I anticipate, you will hear from tomorrow,
13 when we start the trial, and she will tell you about her
14 transition to the presidency of the organization and what
15 happened and how the organization lost money as a result of
16 the sudden departure of the O'Hairs.

17 Their sales and their books and pamphlets dropped,
18 their fundraising activities dropped, they lost membership,
19 and as well as losing their television station, networks. And
20 this is important because one of the elements the government
21 must prove to you in this case is to show that the acts or act
22 of the defendant and/or any unnamed or unindicted
23 coconspirators affected interstate commerce.

24 And one way of showing that, as I anticipate Judge
25 Sparks may tell you, is to show any affect or depletion of

1 assets. And so it's important to know that as a result of the
2 disappearance of the O'Hairs, wherever they went and for
3 whatever reason and whoever caused it, it was financial loss,
4 it resulted in a financial loss to the Atheist Organization.

5 And you'll hear that testimony from Ellen Johnson.
6 And once the IRS became aware, then, that there was \$660,000
7 missing, they initiated an investigation, what we normally
8 call a money laundering investigation, assuming perhaps the
9 O'Hairs had absconded with this money, which, in truth,
10 belonged to the Atheist Organization.

11 And the investigation determined that the money used
12 to purchase the gold coins in San Antonio was actually
13 transferred through a bank in New Jersey, which had received a
14 wire transfer of funds from a trust account in New Zealand,
15 known as the Guardian Trust. And this was a trust that had
16 been founded by the atheists, particularly by Jon Murray,
17 sometime before.

18 Because you see, just prior to their disappearance,
19 the O'Hairs had been involved in a civil Rico lawsuit out in
20 San Diego, California, known as the Truth Seekers trial, and
21 this was a dispute among the Atheist Organization,
22 headquartered here in Austin, and the Truth Seekers
23 organization out in California over who should receive the
24 proceeds of a particular will or estate.

25 And the O'Hairs were very fearful that they might lose

1 that lawsuit, and that if they did lose, they would lose the
2 assets of their organization, including the Charles E. Stevens
3 American Atheist Library and Archive, which was considered one
4 of the organization's most valuable assets. Reportedly, it
5 was the only -- largest and only library of its kind in
6 existence in the United States.

7 And it had been built up by Madalyn O'Hair and her
8 organization over the years. And the O'Hairs, I think you'll
9 hear, were very book-oriented people, and this library was
10 their pride and joy. And before they left, they had made
11 arrangements, some months before they left, to pack this
12 library up and to ship it out of Austin so that it could not
13 be seized in the event the Truth Seekers trial were lost.

14 Well, in fact, they did not lose the Truth Seekers
15 trial. But along about this same time, a man by the name of
16 David Waters came to work at the Atheist Organization, and he
17 originally started as a typesetter by answering an ad in the
18 paper.

19 And when the current office manager left in about
20 December of 1993, Mr. Waters was promoted to office manager.
21 And as the office manager, he had keys to the building. He
22 had access to the safe and Jon Murray's office, which you'll
23 hear was rarely locked. And he had more of a free reign. And
24 it was during this time, we believe the evidence will show,
25 that Mr. Waters learned of these overseas accounts, including

1 the Guardian Trust funds on deposit in New Zealand.

2 And it was also during this same period of time while
3 the O'Hairs were out of town during the Truth Seekers trial --
4 in fact, I think there were two separate trials that resulted
5 from that. On one occasion, they returned and they learned
6 that the computer had been stolen along with the hard drive.
7 And this was significant because the hard drive contained the
8 only inventory in existence of the contents of the American
9 Atheist Library that was being boxed up and put into storage
10 for safekeeping.

11 And Mr. Waters, during his employment with the Atheist
12 Organization, had been one of the individuals responsible for
13 inputting that data into that computer. And now, the computer
14 was gone, and it appeared it may have been an inside job. And
15 then, later on the next year, there was also a second theft of
16 property that involved about 60 or 70,000 worth of bonds that
17 were taken from the safe in John's office.

18 And, again, this appeared to have been an inside job.
19 And then, again, when the O'Hairs were out of town and left
20 Mr. Waters in charge -- and I think you're going to hear
21 evidence that not only did he have the keys to their office,
22 but he was also entrusted with the keys to their home and the
23 alarm code to their home.

24 And, apparently, during this time, while the O'Hairs
25 were out of town, Mr. Waters helped himself to some of the

1 funds at the Atheist Organization to the tune of \$54,000 and
2 change, and, of course, his employment was thereafter
3 terminated.

4 And Ms. O'Hair particularly was very upset about this,
5 so upset, indeed, that she requested the local officials seek
6 prosecution of Mr. Waters for this theft. And she also wrote
7 a very blistering report in her newsletter, which came out
8 every month from the Atheist Organization to all of their
9 members, about what a bad guy David Waters was and how he had
10 ripped them off, and so forth and so on, and how they were
11 fearful of him.

12 And so it was in this period of time, then, just a few
13 months after that, that following Mr. Waters' being finally
14 prosecuted for that alleged theft, that the O'Hairs sort of
15 started making plans to say, maybe we need to get out of town,
16 you know, we're not getting any help here out of the local
17 officials and people are turning their backs on us.

18 And as far back as '93, when the Truth Seekers lawsuit
19 was going on, I think you're going to hear evidence that they
20 did inquire at least into the possibility of moving their
21 organization to New Zealand, because New Zealand is a very
22 secular country, and atheists apparently felt safe in New
23 Zealand.

24 And I believe you'll hear evidence that Jon Murray
25 O'Hair, actually himself, made one or more trips to New

1 Zealand and looked into establishing residence over there, and
2 put these funds on deposit in this bank. And there was some
3 discussion about moving to New Zealand. And I think you're
4 going to hear evidence that this was one of the things Mr.
5 Waters found out about, and he was employed as their office
6 manager.

7 Not only did he know where their assets were, but he
8 knew of their discussions and plans to leave the country and
9 move to New Zealand if they lost that case, or if the Internal
10 Revenue Service came down too hard on them and they needed to
11 get out of the country.

12 And so armed with that information, we believe the
13 evidence is going to show that Mr. Waters concocted a scheme
14 to deprive the O'Hairs of their money and to make it appear to
15 their friends, associates and to government authorities that
16 they had fled the country in order to avoid the IRS, and we
17 think that this plan was executed and carried out by Mr.
18 Waters and others.

19 Now, we're not trying Mr. Waters in this case, and I
20 anticipate Judge Sparks will instruct you at the end of the
21 trial that we're only trying Mr. Karr, but we do have in the
22 indictment that was read to you this morning the phrase "other
23 persons."

24 And in law, that's what we call unindicted or unnamed
25 coconspirators. And even though we're to consider -- or you

1 are to consider the guilt or innocence of Mr. Karr, I
2 anticipate Judge Sparks would also instruct you that you may
3 consider the acts, words and deeds of any alleged
4 coconspirators if you believe that Mr. Karr knowingly and
5 intentionally became a part of the conspiracy, that is, with
6 Mr. Waters and others.

7 So you're going to hear a lot in this case about Mr.
8 Waters, even though he's not on trial today. You're also
9 going to hear about a man by the name of Danny Fry. Now,
10 Danny Fry was another former friend of Mr. Waters' as was Mr.
11 Karr. Mr. Waters and Mr. Karr had met years before in
12 Illinois and apparently maintained a friendship and kept in
13 touch over the years, as had Mr. Waters and Mr. Fry met and
14 became acquainted or associates when Mr. Waters was living in
15 Florida.

16 And during the summer of 1995, Mr. Karr comes to visit
17 Mr. Waters in Austin, Texas. And the first time he comes
18 here, he flies here out of Chicago. And the second time, a
19 few months later, he comes in again, and he makes several
20 trips to Texas, both by air and by driving his own vehicle.
21 And along about this same time, in the summer of '95, you're
22 going to hear evidence that Danny Fry also comes from Florida
23 to Texas.

24 Now we have Mr. Fry, Mr. Waters, and Mr. Karr, all
25 residing together in Mr. Waters' apartment, which he shares

1 with his live-in girlfriend at that time, a lady by the name
2 of Patti Jo Steffens, who I anticipate you're going to hear
3 from during this trial.

4 And then, according to what Ms. Steffens will tell
5 you, at some point, these three men leave. She doesn't see
6 them around. They're gone for almost a month. Oh, they come
7 and go and they may call. And Mr. Waters gives her money in
8 cash. Now, he was unemployed at the time before he left. And
9 on one occasion, he gave her \$5,000 in cash. On another
10 occasion, he gave her \$10,000 in cash -- I'm sorry, 11,000 for
11 a total of 16,000.

12 She used some of the funds to go buy a pickup truck to
13 get around in because Mr. Waters had taken his car when he
14 left. And she really didn't know what Mr. Waters and the
15 others were up to during that month that they were gone. She
16 just knows she didn't see him, that they were gone more than
17 they were home.

18 And when they did come in, they looked very tired,
19 like they had been working at something very hard. And so
20 even though she suspected something might have been going on,
21 she had no direct or personal knowledge of any wrongdoing by
22 anybody.

23 And so things rocked along there until one day, toward
24 the end of September of 1995, Mr. Karr and Mr. Fry and Mr.
25 Waters all returned to Mr. Waters' apartment in Austin that he

1 was sharing with Patti Jo Steffens, and they seemed pretty
2 tired. And Mr. Karr and Mr. Waters seemed to be getting
3 along, but Mr. Fry did not seem to be part of the group
4 anymore. He looked kind of depressed.

5 And Mr. Fry had a reputation as a fella, kind of like
6 to have a drink every now and then and, and he was just kind
7 of out of it. He was looking tired. And I think you're going
8 to hear testimony that he had conversations back and forth
9 with his family in Florida, and he was looking forward to
10 getting out of here and going back to Florida.

11 Patti Jo Steffens agreed to help pack up his
12 belongings and see him on his way. And she left to run an
13 errand and she came back, and the three men were gone again
14 and they were gone overnight. And when she came back -- or
15 when they came back, Mr. Karr and Mr. Waters came back alone
16 and she said, "Where Mr. Fry?" And they said, "Oh, he took
17 off with some guy."

18 But she noticed that some of his belongings were still
19 inside the apartment and she thought this rather strange. And
20 that same weekend, she also happened to observe in a shopping
21 bag in her apartment -- I believe in the kitchen -- three
22 pairs of bloody tennis shoes. Three pairs of tennis shoes
23 that had what appeared to be blood stains on the soles and on
24 the top. And when she started to ask about this, Mr. Waters
25 advised her to forget it and not look in the bag.

1 And after that, she never saw the tennis shoes again.
2 They were gone. And so now, we're down to two, Mr. Karr, and
3 Mr. Waters. And all of a sudden, they have a lot of money in
4 their possession. During the month of September, while they
5 were gone most of the time, Mr. Waters, the evidence will
6 show, purchased a Cadillac Eldorado, in San Antonio, for
7 \$13,000 cash.

8 On one occasion, he brought it back to Austin. It was
9 during the Pecan Street Festival of that year. And those of
10 you who know, we have the Pecan Street Festival in the fall
11 and in the spring. This was about the last week in September.
12 And Patti Jo Steffens had occasion to use that Cadillac and to
13 put something in the trunk.

14 And when she opened the trunk, she saw what appeared
15 to be a new orange-handled bow saw along with an old, beat-up
16 shovel, longhandle shovel. And she thought this rather
17 strange because he had just purchased this car, Mr. Waters in
18 San Antonio over the week or so before. And all of a sudden,
19 he's got a bow saw, and they don't have a garden in this
20 apartment where they live, and she thought that was rather
21 strange.

22 And she kept seeing these things happen, but she
23 didn't really put two and two together until sometime later,
24 as she will tell you. Well, the next thing that happened is
25 Mr. Karr makes arrangements for his ex-wife to fly in here, to

1 Austin, and he and Charlene Karr, his ex-wife, and David
2 Waters and Patti Jo Steffens go check into the Four Seasons
3 Hotel, down here in South Austin, and they have a real good
4 time.

5 And during that same time or prior to that, Ms.
6 Steffens had been asked by Mr. Waters to rent a storage unit
7 out on Burnet Road, near the Poodle Dog Lounge, where she had
8 worked her way as a bartender, worked her way through the
9 University of Texas, while she was living with Mr. Waters.

10 And she had rented this storage unit and given the
11 keys to Mr. Waters. And he said, "I'm going to put some gold
12 in that storage unit. I'm going to put some gold coins." And
13 later on, he had given Ms. Patti Jo Steffens one of the gold
14 coins, which she later pawned at a local pawn shop here in
15 Austin, and you'll hear evidence to that effect.

16 Anyway, this day that they go to check in to the Four
17 Seasons Hotel -- and we've determined that to be October the
18 3rd, 1995 -- based on the hotel records, Ms. Steffens receives
19 a very frantic call from Mr. Waters and said, "Go to the
20 storage unit and the gold or the bag is gone." And sure
21 enough, she goes out there and there's nothing in there; it
22 was empty.

23 And I think she believed that she was going to get
24 blamed by Mr. Waters for having taken the gold. And she was
25 wanting to assure him that that had not been the case. And so

1 then, they go to the Four Seasons the next morning. Mr. Karr
2 and his ex-wife leave in a car to drive back to Florida.

3 And before he leaves, Mr. Waters gives him three Rolex
4 watches: One men's, like, Presidential, blue face Rolex
5 watch, and two ladies' silver and gold Rolex watches, and
6 says, "Here, take these and get rid of them. The O'Hairs
7 don't want them anymore."

8 And so, Mr. Karr dutifully takes these watches back to
9 Florida and disposes of them, sells them, and gives or sells
10 one to his sister, Sidney Karr, in the Chicago area. And
11 you'll hear evidence about a search warrant that was executed
12 at Sidney Karr's residence. And although she claims to have
13 lost the watch, there was other evidence found that indicates
14 the watch was in her possession including a copy of her will,
15 where she had willed it to her daughter, a photograph of her
16 wearing what appears to be a Rolex watch, and a jewelry
17 receipt where she had had it repaired and had an estimate or
18 had it appraised.

19 And I think you're going to hear evidence that one of
20 those watches went to Sidney Karr. And you're going to hear
21 evidence from a local jeweller, here in Austin, who was quite
22 familiar with the Rolex watches that the O'Hairs owned because
23 they had had them repaired and cleaned and worked on.

24 And she's going to tell you that the value of those
25 three watches was in excess of \$5,000, which is a jurisdiction

1 element that the defense -- or, excuse me, that the government
2 must meet in establishing the offense of interstate
3 transportation of stolen property.

4 And the investigation of this matter rocked along for
5 quite a while. And what -- about a year after they
6 disappeared, Ms. Murray's surviving son, William J. Murray,
7 the evangelist, filed a missing person's report with the
8 Austin Police Department, and apparently went into the local
9 probate court and attempted to get a guardianship or
10 receivership appointed to take over the estate or the property
11 of his missing family members.

12 And the probate court apparently appointed some local
13 attorneys to handle that, and you'll either hear from them or
14 see some of the records, certified documents, that they did
15 because their job was to collect the assets, you know, and try
16 to pay the bills and do whatever receivers and guardians do,
17 administering an estate.

18 And so you're also going to hear evidence from the tax
19 attorney for the O'Hairs, who was attempting to negotiate a
20 settlement with the IRS in advance of their lien. And you're
21 going to be hearing a lot of records in this case, and we hope
22 that -- it's going to be long, but if you'll bear it out, I
23 think you'll find it to be a very interesting puzzle that you
24 could hopefully get the pieces put together for us.

25 But what changed the complexity of this case from just

1 some atheists that disappeared and money laundering of
2 \$600,000 was that in late or early last year, 1999, the
3 results of DNA analysis were conducted on a body, which had
4 been laying in the morgue in Dallas County, unidentified for
5 over three years, because its head and hands were missing.

6 And this body had been found in the afternoon of
7 October the 2nd, 1995, on the banks of the Trinity River in
8 eastern Dallas County, near the town of Seagoville.

9 And through DNA analysis conducted several years after
10 the fact, it turned out that this gentleman whose remains were
11 found up there in this mutilated condition was the same Danny
12 Fry from Florida who had been here with Mr. Karr and Mr.
13 Waters during the summer of 1995 and who turned up missing
14 just a day or two after the O'Hairs were last heard from.

15 And so, at that point, the focus of the investigation
16 shifted, and it was determined that Mr. Karr had, in fact,
17 been here in Texas that time. That he had rented three vans
18 from Capps Van Rental here in Austin. That the rental of
19 these vans coincided with what appeared to be movement of the
20 O'Hairs from Austin to San Antonio in the first case and,
21 later, from San Antonio back to Austin, where a second storage
22 unit was rented at the behest of Mr. Waters by another
23 unindicted coconspirator that you'll hear about named Gerald
24 -- known as Chico Osborne.

25 Now, at the time this was all going on, Mr. Osborne

1 lived up near Lake Tawakoni, just east of Dallas, a few miles
2 from where the mutilated body of Danny Fry was discovered on
3 October 2nd, 1995. And the evidence will show that Mr.
4 Osborne came to Austin and rented a storage unit for David
5 Waters.

6 And you're going to hear evidence that at some point
7 in time, the manager of that storage unit observed about three
8 middle-aged men, a couple of trucks and some barrels, and he's
9 going to tell you that he was concerned about these barrels
10 because people might store hazardous waste in a storage
11 locker, and he could get in trouble with the city or the state
12 or the federal government.

13 So he was very concerned about what might be in those
14 blue barrels that he described, but he never saw them again.
15 And then, when the news of Mr. Fry's body being identified
16 shortly after that, Ms. Patti Jo Steffens, the young lady who
17 had lived with Mr. Waters, came forward and called the FBI and
18 wanted to report her knowledge of what she had learned during
19 the years she had been with Mr. Waters and had been associated
20 with Mr. Fry and Mr. Karr.

21 Because when Mr. -- she learned that Mr. Fry was dead,
22 she began to put two and two together and think that maybe she
23 had some information that the police might use or perhaps she,
24 herself, could be charged for what's called misprision of a
25 felony, and that is knowing about a crime and covering it up

1 or not reporting it, or maybe an accessory after the fact.

2 So she contacted an attorney who contacted our office,
3 and we offered her what's known in law as use immunity, which
4 means that as long as she was truthful and told what she knew,
5 that the evidence could not be used against her. Not to say
6 she couldn't be prosecuted indifferently on evidence already
7 known to the government or to the state, but that anything she
8 told investigators would not be used against her.

9 And so with that agreement in hand, Ms. Patti Jo
10 Steffens, who at that time was Steffens-Chavez, because she
11 had married, she began to relay a very strange tale of the
12 coming and going of Mr. Waters, Mr. Fry, and Mr. Karr during
13 the summer of 1995. And I think you're going to find her to
14 be a very interesting witness.

15 And the investigators also determined that when this
16 room was rented for 30 days in San Antonio at a place called
17 the Warren Inn Village, which, incidentally, Mr. Waters and
18 Ms. Steffens had lived there a short time before they moved to
19 Austin in the early '90s.

20 And when that room was rented, it was represented by
21 Mr. Karr, the defendant in this case, and Mr. Waters, because
22 they had to show a copy of their driver's licenses, which the
23 clerk made a photocopy of. So we could pretty much trace
24 their movements through the van rental records, the hotel
25 rental records, the credit card records and the phone tolls

1 during that period of time.

2 Now, in addition, you're also going to hear evidence
3 that the Mercedes Benz that Jon Murray drove was sold by
4 someone posing to be Jon Murray, right here at the Warren Inn
5 in San Antonio, during that September of 1995 for \$15,000,
6 which was about \$5,000 below book value. I think you're also
7 going to hear evidence that in addition to those vehicles,
8 we've already said that the Porsche was left at the airport,
9 and it was discovered out there by the airport police where it
10 had been left in a parking lot and was later impounded.

11 And so, there was that vehicle, and then, there was
12 the Cadillac that David Waters had purchased for \$13,000 cash.
13 You're also going to hear evidence that during this same time
14 period, the month they were in San Antonio, that Jon Murray
15 went to a diamond dealer in San Antonio and purchased an
16 almost flawless solitaire diamond for \$6,600 and change.

17 And you're going to hear evidence that sometime
18 subsequent to these events occurring, Mr. Karr had that
19 diamond. That Mr. Waters sent it to him and asked him to sell
20 it, and, in fact, he did sell it for \$3500. And after holding
21 out a little for himself, he sent the money back to Mr.
22 Waters. And we have that diamond, and the jeweller who sold
23 it to Jon Murray back in 1995 is going to come in here and
24 testify that that appears to be the same stone because it was
25 such a flawless solitaire.

1 So we have the watches, we have the diamond, and in
2 addition, we can account for about \$95,000 of funds that were
3 raised from various accounts that Jon Murray had, various
4 credit cards, various bank accounts. And in addition to the
5 half million dollars in gold, we can show that there was about
6 \$90,000 in funds that were raised during that month that the
7 O'Hairs were believed to be in San Antonio.

8 And so, I think that's significant because if you
9 follow the money, you can pretty much figure out what happened
10 in this case. Now, just a little bit about the gold. The
11 gold coins were stolen from the storage unit on Burnet Road on
12 or about October the 3rd, 1995, the same day that O.J. Simpson
13 was found not guilty in California.

14 And there were three burglars from San Antonio who had
15 a master key to a Master padlock, and it would fit most kinds
16 of Master padlocks. And they had used this successfully in
17 San Antonio in going around to bus stations and other places
18 where there were public lockers, and they apparently decided
19 to branch out and come to Austin.

20 And they went to this storage facility, and it
21 pretends to be quite fortuitously -- they happened to get in
22 the storage unit and found this bag, which they didn't know
23 what it contained, but the bag in the storage unit that was
24 very heavy, and they took this thing out and put it in the
25 trunk of the car without ever really knowing what it was.

1 And they drove around and opened the trunk and saw
2 what they had, and they went to a book store and got a book on
3 coins and found out that each of these gold coins they had --
4 they weighed about between 75 and 100 pounds, but each one of
5 these was valued at about 350 to \$400.

6 And you're going to hear evidence that these three
7 young men gave these coins to their -- various of their
8 friends in San Antonio and asked them to sell them, take them
9 in to a dealer because you can't trace them. They don't have
10 serial numbers on them, like money, paper money. And if
11 anybody said anything, to just say that this was inheritance
12 from my grandfather.

13 And it took those boys almost 18 months to spend that
14 money. They went to Las Vegas, they bought cars, they bought
15 guns, they bought jewelry, they treated everybody. And one of
16 these gave his girlfriend a little pendant that we have, just
17 only one of the gold coins that had been recovered. And
18 you'll see that in evidence before the trial is over because
19 she saved that pendant.

20 And I think you're also going to hear evidence that as
21 a result of information provided by Patti Jo Steffens, if
22 investigators were able to establish what we call probable
23 cause or reasonable grounds to believe that a crime had been
24 committed, and that evidence of that crime may be found if
25 they could obtain a search warrant for Mr. Waters' apartment

1 here in Austin, Texas.

2 And they executed that search warrant on March -- back
3 in March of '95 -- excuse me, March of '99, last year. I
4 believe it was the 23rd -- 24th, excuse me. I think it was
5 David Waters' birthday, if I'm not mistaken, and they found a
6 lot of incriminating evidence. They found that orange handle
7 bow saw. They found a lot of stuff you're going to hear
8 about. And they also located, in Peoria, Illinois, Mr.
9 Waters' brother. And they found a couple of sets of
10 handcuffs, some switch blade knives, and a couple of guns, and
11 some ammunition that all tied back to that apartment.

12 In fact, you're going to hear evidence from Ms.
13 Steffens that she was with David Waters on one occasion when
14 he bought a pair of these handcuffs at McBride's on Lamar.
15 She described them very succinctly, one linked and one hinged.
16 She said Mr. Waters usually kept these handcuffs in the sock
17 drawer in their apartment. And during the month of September,
18 when they were all gone, she noticed that the handcuffs were
19 also gone.

20 And she also said that Mr. David Waters had a Nine
21 Millimeter Browning automatic pistol, which he used to like to
22 take out to a local gun range. And you'll see photographs in
23 the family photo album of Mr. Waters shooting that very
24 pistol.

25 And so, it all begin to fit together. And it weaved a

1 chain of circumstantial evidence that pointed to the
2 involvement and the guilt of these three men in the abduction
3 of the O'Hairs for financial gain in the disposing of their
4 remains.

5 And when Mr. Karr was visited by investigators, he was
6 residing at that time up in Michigan, and Mr. Karr was very
7 cooperative with the investigators. He provided them a
8 written statement, and he admitted that he knew Mr. Waters.
9 And he stated that he had been hired by Mr. Waters as a
10 bodyguard to help the O'Hairs flee the country to avoid the
11 IRS.

12 And that he took orders from Mr. Waters, and Mr.
13 Waters rewarded him financially. And he also admitted renting
14 the three vans, but he did it at the behest of David Waters.
15 And he gave Mr. Waters the key, and he was not about to
16 involve himself in any criminal activity. He was just there
17 to serve as a bodyguard and try to make a little money.

18 And he also admitted that at some point in time, he
19 learned -- he believed, or Mr. Waters insinuated or told him
20 that he had killed the O'Hairs. And again, Mr. Karr was very
21 cooperative and provided a map, a hand-drawn map to the
22 investigators that led the investigators to a ranch located in
23 southern Real County, out near Camp Wood, where about 30
24 federal and state investigators spent a three-day Easter
25 weekend last year searching for the remains of the O'Hairs,

1 which is where Mr. Karr said he thought they were buried or
2 where David Waters had buried them.

3 Because he, Mr. Karr, said that after he returned home
4 to Florida, that Mr. Waters had called and told him he needed
5 to come back to Texas. He was concerned because of heavy
6 rains in the area that the barrels or the bodies might have
7 been floating or resurfacing, and they wanted to make sure
8 they were securely tucked away.

9 And that he was afraid of Mr. Waters and afraid not to
10 do what Mr. Waters said or Mr. Waters could harm him the way
11 that he had done the O'Hairs. And so I think you're going to
12 see, ladies and gentlemen, that this is a tale that involves
13 not only financial greed on the part of the participants, but,
14 also, revenge particularly on the part of Mr. Waters of who
15 after the O'Hairs got him prosecuted and wrote that very
16 bitter article about him in the newsletter that he became
17 obsessed with separating them from their money and doing them
18 harm.

19 And based upon that testimony and that evidence that
20 you're going to hear from that witness stand in the next few
21 weeks, the government is going to ask you, at the conclusion
22 of this trial, to return a verdict of guilty as to Mr. Karr on
23 all counts of the indictment. And I thank you for your time
24 and attention.

25 THE COURT: Mr. Mills.

1 DEFENDANT'S OPENING STATEMENTS

2 MR. T. MILLS: May it please the Court. Mr. Carruth,
3 Mr. Mills, and members of the prosecution team.

4 Thank you for taking this duty on as the Judge
5 discussed with you. We know that you didn't have a choice
6 when you got the postcard or the communication in the mail,
7 but we do appreciate it, and we will do our best to keep the
8 evidence moving and to keep it from being bogged down.

9 The defense, which consists of myself, Tom Mills, and
10 my law partner, Christie Williams -- and we're aided by a law
11 student, Allison Holland -- are working for Mr. Gary Paul Karr
12 in this case, and because of the way that the procedure works,
13 we won't really get to put on evidence for a couple of weeks.
14 We get to cross-examine as his Honor mentioned. And if we can
15 elicit testimony through cross-examination, that's beneficial
16 to Mr. Karr, then, of course, we will try to do so.

17 There is a professor of evidence who has described
18 cross-examination, at least if it's done well, as being the
19 greatest engine for the search for truth in Western
20 civilization has produced. And we'll try to be effective in
21 our use, as I know all the attorneys will.

22 The evidence is going to show that Mr. Karr has been
23 to prison. And if that caused each of you individually to
24 vote him guilty of any crime, we could shortcut the trial by
25 about three or four weeks. Now, of course, we all know that

1 there are millions, if not tens of millions of people who have
2 been to prison before, and it is, of course, not logical to
3 blame any one person for any crime that may have been
4 committed because of that fact.

5 I want to discuss with you some of the evidence that
6 the prosecution is going to bring to you and, hopefully, some
7 of the evidence that we're going to bring to you through
8 cross-examination and through calling witnesses. We do have
9 subpoena power. We, of course, have to find people to
10 subpoena them, but we have time to do that.

11 There are three potential pieces of evidence or items
12 of evidence that Mr. Carruth did not mention to you as
13 bringing to you, and that would be the dead bodies of Madalyn
14 O'Hair, or Jon, or Robin, and that is going to be something
15 that y'all will have to decide on in terms of importance.

16 Mr. Karr is indicted in several counts for conspiring
17 with other people to kidnap these three people, to extort
18 money from them, to use interstate commerce to defraud them of
19 money, and it's called money laundering, to cause their death
20 through his actions. And various witnesses will be offering
21 testimony about, maybe, all of these counts or one specific
22 count as the case proceeds.

23 There is nothing that his Honor will instruct you on,
24 I anticipate, that says that you are not to use common sense.
25 There are many, many pieces of evidence in this case. I don't

1 know that I have counted them. In fact, I know that I have
2 not. But I know that there are many, many pieces -- items of
3 evidence.

4 Even though I have more gray hair than I would prefer,
5 I have the blessing of having a young daughter, and I was
6 talking with her a week or two ago about one of these
7 connect-the-dots books. I'm sure you've seen them before.
8 Children, grandchildren, they've been around forever.

9 And the general theory is that you connect one to two
10 to three, and after you do that, there's a completed picture.
11 And the problem in this case is that the evidence does not
12 always go from one to two to three. We might have item of
13 evidence No. 1, and we might next have item of evidence No. 5,
14 and then, No. 11 instead of 6.

15 And so the problem in terms of coming to a conclusion
16 of what happened in this case beyond a reasonable doubt is
17 that the lawyers who are naturally -- and this is the way it's
18 supposed to be -- advocates for their side of the case
19 describe what they believe is a reasonable deduction from the
20 evidence.

21 And I might take the dots, and I might connect them in
22 such a way to where I end up with a kind of a
23 primitive-looking canvas with a flower on it, and I may say
24 this evidence concludes that what we are talking about here is
25 a certain conclusion.

1 Now, in discussing the case that Mr. Carruth has
2 outlined for you, the prosecution has a very different theory
3 of the conclusion using the same items, the same numbers than
4 the defense does, and it's going to be up to you to decide
5 whether or not by connecting between the numbers we end up
6 with a lizard. Down here are the lizard's foot. But you see,
7 all of this is drawn without being connected to an item of
8 evidence. This is what we believe the evidence must be or
9 what the prosecution believes the evidence must be.

10 Sometimes in your experience, you may have heard this
11 or you may have thought it. It's actually a scientific rule,
12 but it is very tight-fitting with common sense, and that is
13 the simplest of competing theories is preferred to the more
14 complex explanation.

15 In other words, let me refer to some of the evidence
16 that Mr. Carruth has discussed with you just in the last few
17 minutes. He mentioned a gun, he mentioned a shovel, and he
18 mentioned a saw. Well, of course, I don't know if we had a
19 show of hands here how many people would have a shovel, but I
20 would guess that a lot of people would have.

21 I don't know how many of us would have a saw, but I
22 could guess that a number of people might. Now, in addition,
23 there may be no evidence in this case that a gun was used. In
24 other words, we don't have any bodies. And poor Mr. Fry, I
25 don't know if he got shot in the head or not, but we don't

1 have a head.

2 So I don't know of any evidence in this case that a
3 gun was used. I don't know of any evidence that a saw was
4 used. I don't know of any evidence that a shovel was used.
5 In the period of time 1994 and 1995, there came into a
6 collision two very, very strong-willed, strange people, and
7 those two people were Madalyn Murray O'Hair and David Waters.

8 We know a lot about Ms. O'Hair not only from just the
9 investigation of this case but, also, from her son, William,
10 who has written extensively about their family growing up.
11 And we know that Ms. O'Hair was extremely smart, extremely
12 clever. She manipulated and motivated people by lying as she
13 wanted to.

14 She responded to problems in her life by leaving the
15 country frequently, by traveling with false identification,
16 including passports and driver's licenses, by having other
17 members of her family do the same. And for years, while she
18 was the grand matriarch of the atheist community of the world,
19 and especially the United States, she controlled her mail.
20 And by controlling her mail, she controlled who knew what
21 assets the atheist community, located here in Austin, was
22 getting.

23 People donated land to the atheist community. They
24 sent stocks and bonds and money, which is their right, but
25 there were not independent audits done. She talked for years

1 openly to people in the atheist community and outside of the
2 atheist community about wanting to leave the United States
3 with money that she had sent offshore.

4 The defense contends that there is no evidence of
5 where all the money went. She was in constant disputes, she
6 and her son, Jon, and her daughter, Robin, with the Internal
7 Revenue Service about whether or not they personally or the
8 organizations owed money, significant money.

9 Now, it may be that the simplest explanation of what
10 happened to Madalyn, Jon and Robin is that she did with them
11 exactly what she said she was going to do for years, that she
12 left to flee the Internal Revenue Service. That she had money
13 in Europe, or in Australia, or New Zealand. We know what the
14 evidence will show of hundreds of thousands of dollars
15 transferred from New Zealand.

16 But the evidence will not show a full accounting of
17 all of the other assets. In July of 1995, Ms. O'Hair caused
18 to be published in an atheist newspaper, an article being very
19 critical of David Waters, and talking about the fact that he
20 had a criminal record, and it would be a logical deduction
21 that Mr. Waters was angry about it.

22 I believe that Ms. Steffens will testify that she --
23 that he was angry about it. But it's also a logical deduction
24 that it is as consistent with the evidence as anything else in
25 this case that he went to Ms. O'Hair and said, "I know about

1 you, lady, I know about your money laundering techniques."

2 "And the timing is right for your family to do exactly
3 what you've said that you wanted to do for years. You've got
4 the money stashed away. Some of the money can be wired back
5 here. Purchase gold coins with them. I'll take some. I'm
6 going to have my friends, including Gary Karr, help get your
7 things liquidated, have your dogs that you love so much taken
8 to the veterinarian, because you can't take dogs like that
9 through customs, have to leave your poor Porsche behind,
10 Robin, but after that, you're fleeing the United States if you
11 -- as you have said you would do for years."

12 "You're fleeing a very -- an organization that has
13 caused others to be fearful, the Internal Revenue Service,
14 because they could not only try to put you in jail for tax
15 evasion, but they can seize your assets and everything else
16 you've got."

17 She was experienced in trying to hide assets during
18 the civil suit with an organization called the Truth Seekers.
19 She had shipped away her valuable library to Kansas City just
20 to hide assets. Well, that's a fraudulent transfer of assets,
21 but she's not above that because that was how she lived.

22 During September 1995, Mr. Karr was in Dallas
23 periodically. Periodically, he was in Florida, where he
24 worked, where his ex-wife lived, and sometimes he did things
25 that would aid Mr. Waters in accomplishing his job with the

1 O'Hair Murrays, that is, helping them liquidate their assets
2 and leave town.

3 Now, is an action that Gary Karr took one of
4 innocence? He arrived and he was the only one with a credit
5 card. Ah-ha, we have evidence to show that the prosecution
6 shows that he rented a room. Well, is that incriminating or
7 because of the fact that he was the only one with a credit
8 card, is that just a lizard's foot that sounds incriminating
9 but not when you really pare away the fluff from the hard
10 fact?

11 Ah-ha, he rented a van. If you rent a van, that must
12 mean you know that a dead body's going to be put in it.
13 Really? How about that you're going to move belongings? How
14 about, you know, what they wanted to rent it for, but Mr.
15 Waters asked him to rent a van. Mr. Waters motivated Patti Jo
16 Steffens sometimes, his girlfriend during part of these events
17 through fear, it is said, through lying to her about what his
18 activities were.

19 And the prosecution wants you to accept that. It may
20 be true. The defense says that the evidence is just as
21 compelling that Mr. Waters motivated Mr. Karr through lying to
22 him about what might have been going on and through fear. For
23 example, part of the evidence in this case, the defense
24 contends from the prosecution, is internally inconsistent, and
25 let me tell you what I mean.

1 The prosecution, apparently, is going to be presenting
2 evidence that there were some blue barrels near a storage
3 space, and that back in '95, a man was interviewed in 1999,
4 and he said, you know, Mr. IRS Agent, or Ms. FBI Agent, I
5 remember that four years ago, I saw a couple of pickup trucks
6 and some blue barrels, and here's the description of the men:
7 They were white men, brown hair and about five-nine or ten.

8 Well, that must be Gary Karr. And not only that, if
9 there were blue barrels involved, that must mean by definition
10 that these three missing people must have been put in the
11 barrels and sealed up and buried. But wait, that's not the
12 case because their next bit of evidence is that Mr. Waters
13 told Mr. Karr, which he did, don't know if it's the truth --
14 that there might be hands or feet sticking out of the ground
15 somewhere in the Hill Country. Better cover it up with dirt.

16 Well, that is factually inconsistent if they're in
17 sealed barrels, if they are, then -- and buried, which nobody
18 knows, then they wouldn't be sticking out of the ground.
19 They're riding several horses at the same time. They are
20 going to be presenting evidence. And, in fact, Mr. Karr is
21 formally indicted for kidnapping over 30 days. What did he do
22 to kidnap this family?

23 Well, he got in the taxi cab with Jon, who was about
24 six inches taller than him and about 122 pounds heavier than
25 him, and flew to New Jersey. Jon had opportunities at every

1 place along the way to talk to the police, to call the FBI, to
2 call the United States Marshal, to call Mr. Carruth, to call
3 anybody in the entire world, but he didn't.

4 A week before that, Jon went to Frost Bank in San
5 Antonio, and because of the fact that he was picking up gold
6 coins, the coin dealer who was meeting him there had a private
7 police -- San Antonio policeman off-duty -- not private.
8 Off-duty policeman. And they went into a conference room with
9 a camera, and the policeman had on his uniform and a radio on
10 his belt and a gun.

11 And Mr. Jon Murray sits down and the coin dealer says
12 that he acted calm as a cucumber. He took the coins out and
13 fondled them and looked at them lovingly and wasn't nervous
14 and wasn't sweating. Well, here's another interesting point
15 of the prosecution's case. The indictment accuses Mr. Karr of
16 either kidnapping these three people by force, or not
17 kidnapping them by force but tricking them into not running
18 away.

19 Well, which is it? You're going to have to decide the
20 evidence at the end of the case to see if we're looking at
21 something that's a hard-core fact that you know what it means
22 or a fantasy lizard's foot that's just drawn in by
23 speculation.

24 The prosecution has devoted, I'm sure, appropriately
25 so, a massive amount of resources and money on this case. I

1 do not believe the evidence is going to indicate that their
2 forces were used to follow up on people who claim to have seen
3 alive, in specific cities in Europe, the O'Hairs, the O'Hair
4 Murrays. Responsible people, not people out of a psychiatric
5 ward, not people on drugs from Amsterdam, but business people.

6 I don't know, yet, what these people's interviews will
7 be, but I believe the evidence is going to show that it has
8 not been followed up. We do not know what books and records
9 Mr. Waters had access to in the home of Madalyn Murray O'Hair,
10 but we do know that he had access to their keys and to their
11 alarm code.

12 We will listen with interest to the attorneys who
13 testify, if they do, about the accounting of the money of the
14 estate of the individuals to find out if it is known by any
15 one person the -- all of the assets that were controlled by
16 Ms. O'Hair. If you follow the money, you're told by Mr.
17 Carruth, fine lawyer, you can pretty much tell what happened
18 in this case.

19 I just want to end by reminding you of the burden of
20 proof and the standard of proof. The government gets to start
21 and end. It's their job to prove it. And the standard is not
22 do you pretty much know; it's do you know beyond a reasonable
23 doubt.

24 And we will be presenting evidence as succinctly as we
25 can to help you solve the questions in this case and greatly

1 appreciate your attention. Thank you.

2 THE COURT: Ladies and gentlemen of the jury, you'll
3 never know exactly what is going to be happening in federal
4 court. I thought I would be selecting a second jury today,
5 but fortunately, Judge Austin took that responsibility away
6 from me because of the way I feel.

7 I've told the lawyers they wanted to know how far
8 we're going to go, so I said we're going to go through opening
9 statement today. So I will not impose upon them further work
10 today. Now, Ms. Copeland, I like to start at 8:30, but if
11 that's a problem for you --

12 THE JUROR: That's fine. I think I'm staying here.

13 THE COURT: All right. I'd like for you to be here
14 about 8:25 or earlier. Mr. Mace will be here if you'd like to
15 get up early and get here. He'll have a little coffee and
16 everything ready for you, but I'd like to start promptly at
17 8:30 with the evidence in the case.

18 Please remember the instructions. Don't talk to
19 anybody about the case. Be in a position where you can
20 testify yourselves under oath that you have not talked to
21 anybody, let anybody talk to you, or know anything about the
22 case. I promise you and I think you can see from the lawyers'
23 statements we're going to have plenty of evidence to solve
24 this case.

25 Okay. All rise for the jury.

1 (Jury not present.)

2 THE COURT: Counsel, both of you have motions in
3 limine. You have a motion in limine about criminal background
4 about your client and yet, on opening statement, Mr. Mills,
5 you said he'd been in the penitentiary. I'm not making any
6 statement -- you don't have to stand. I'm just saying that if
7 I make a ruling on one side on a motion in limine, I'm not
8 going to let that side use that ruling in the interest of not
9 being fair.

10 So just think about these things as you prepare your
11 cases today. Now, anything further from the prosecution?

12 MR. CARRUTH: No, your Honor.

13 THE COURT: Mr. Mills, anything further?

14 MR. T. MILLS: No, sir.

15 THE COURT: All right. You are to be here at 8:25 in
16 the morning for an 8:30 start.

17 (Proceedings adjourned.)

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